# MASSACHUSETTS GAMING COMMISSION MEETING

July 2, 2014
10:30 a.m.
**Bunker Hill Community College**
250 Rutherford Avenue, A300
Charlestown, MA

★★★★★
Massachusetts Gaming Commission
84 State Street, 10th Floor, Boston, Massachusetts 02109 | TEL 617.979.8400 | FAX 617.725.0258 | www.massgaming.com

# NOTICE OF MEETING and AGENDA
June 27, 2014

Pursuant to the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25, notice is hereby given of a meeting of the Massachusetts Gaming Commission. The meeting will take place:

**Wednesday, July 2, 2014 at 10:30 a.m.**
**Bunker Hill Community College**
**Room A300**
**250 Rutherford Avenue**
**Charlestown, MA**

**PUBLIC MEETING - #127**

1. Call to order
2. Discussion of the Request by the City of Boston for the Commission to Defer a Decision in Region A.

- On June 27, 2014 the Commission received a Motion of the City of Boston to Stay Proceedings Involving Category 1 License Applications in Region A ("Motion") from Eugene L. O'Flaherty, Corporation Counsel for the City of Boston ("City") relative to the Region A licensing process. In the Motion, which is attached to this notice, Attorney O'Flaherty, on behalf of the City, requested "that the Commission order an immediate suspension of all proceedings regarding the issuance of a Category 1 license in Region A, pending the outcome of the November referendum."
- As it has routinely done in the past, the Commission hereby requests public comment, prior to addressing this Motion at the public meeting, on whether the Commission should order an immediate suspension of all proceedings regarding the issuance of a Category 1 license in Region A, pending the outcome of the November referendum. Comments should be sent via email to mgccomments@state.ma.us and must be received by 5 p.m. on Tuesday, July 1, 2014. A commenter should include the phrase "Region A decision" in the subject line of the email.
- Further, the Commission invites a representative of the City of Boston, the City of Revere, the City of Everett, Mohegan Sun Massachusetts, LLC and Wynn MA, LLC, the entities most directly affected by the Commission's decision on the Motion, to appear before the Commission at the public meeting to offer oral comment on the Motion. Each entity will be allotted 15 minutes to offer their comments though the Commission may allow more time if necessary. The Commission may ask any questions it deems necessary to help clarify any issue. Members of the public will of course be welcome to attend the meeting, but will not be invited to offer oral comments. Written comments from other surrounding communities, elected representatives, and other officials will also be considered by the Commission.
- At the conclusion of the meeting the Commission may either deliberate and reach a decision regarding the Motion and matters related to the Motion or schedule a further meeting to make such a determination.

3. Other business – reserved for matters the Commission did not reasonably anticipate at the time of posting.

I certify that on this date, this Notice was posted as "Gaming Commission Meeting" at www.massgaming.com and emailed to: regs@sec.state.ma.us, melissa.andrade@state.ma.us.

June 27,2014
Date

James F. McHugh
Commissioner

Gayle Cameron
Commissioner

Bruce Stebbins
Commissioner

Enrique Zuniga
Commissioner

**Date Posted to Website:** June 27, 2014, at 3:30 a.m.

CITY OF BOSTON • MASSACHUSETTS
**Law Department**
City Hall, Room 615 Boston, MA 02201

VIA EMAIL

June 30, 2014

Samuel M. Starr
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111

John A. Stefanini
DLA Piper LLP
33 Arch Street, 26th Floor
Boston, MA 02110

Re: *City of Boston's Pending Motion to Stay Before the Massachusetts Gaming Commission*

Dear Messrs. Starr and Stefanini:

On Thursday, June 26, 2014, the City sent a letter to the Massachusetts Gaming Commission requesting a stay of all proceedings regarding Category 1 licensing in Region A in light of the Supreme Judicial Court's recent decision in *Abdow v. Attorney General*, SJC-11641. The next day, June 27, the City filed a formal motion to stay with the Commission. The City sent copies of its letter and motion to you. The Commission has informed the City that it will hear argument on its motion at the public hearing scheduled for Wednesday, July 2, after which the Commission intends to deliberate and render a decision on whether a stay of all proceedings is appropriate. The City will appear and argue its motion on July 2.

In light of its pending motion to stay, the City considers all negotiation and arbitration deadlines with respect to potential agreements with Wynn MA, LLC and Mohegan Sun Massachusetts, LLC to be suspended until the Commission renders its decision. Pending the outcome of the City's motion, the City presently does not intend to participate in negotiation and arbitration regarding the surrounding community issue.

Very truly yours,

Eugene L. O'Flaherty
Corporation Counsel
City of Boston

cc: Massachusetts Gaming Commission

BEFORE THE MASSACHUSETTS GAMING COMMISSION

In the Matter of:

REGION A CATEGORY 1 GAMING LICENSING PROCEEDINGS

**MOTION OF THE CITY OF BOSTON TO STAY PROCEEDINGS INVOLVING CATEGORY 1 LICENSE APPLICATIONS IN REGION A**

The City of Boston respectfully moves that the Commission immediately stay all proceedings regarding the issuance of a Category 1 gaming license in Region A. As grounds for this motion, the City states:

**FACTUAL BACKGROUND**

1. On May 15, 2014, the Commission issued a written decision that Boston is a surrounding community to the pending casino proposals submitted by Mohegan Sun Massachusetts, LLC ("Mohegan Sun") and Wynn MA, LLC ("Wynn").

2. Thereafter, without waiving its position that Boston is a host community to both casino proposals, the City has engaged in discussions with Mohegan Sun and Wynn regarding potential agreements.

3. On June 24, 2014, the Supreme Judicial Court issued its decision in *Abdow v. Attorney General*, SJC-11641, holding that the Attorney General erred in declining to certify an initiative petition meant to prohibit casino gambling in Massachusetts for inclusion on the ballot for the November statewide election. The Court ruled that the initiative should be decided by the voters at the November election, and ordered that the Attorney General be directed to certify the petition. A copy of *Abdow* is attached as Exhibit 1.

4. Shortly after the Court announced its decision in *Abdow*, the Commission issued a statement that it "respects the decision of the Supreme Judicial Court" and has "flexibility . . . even in an atmosphere of uncertainty."

5. In light of the Commission's statement and the Court's decision in *Abdow*, on June 26, 2014, the City sent a letter to the Commission requesting it to stay these proceedings. Given the uncertainty of expanded gaming in Massachusetts, the City emphasized that a stay was necessary to save the City from incurring considerable expenditure of time, money, and effort in connection with the ongoing proceedings. A true and accurate copy of this letter is attached as Exhibit 2.

6. On the same day, the City received a letter from Wynn providing notice of its intent to commence arbitration with the City pursuant to 205 CMR 125.01 (6)(c)(2). A true and accurate copy of this letter is attached as Exhibit 3. Wynn's letter states that it intends to "work with the City of Boston to select a neutral, independent arbitrator or arbitrators" and "submit its best and final offer for a surrounding community agreement" on July 2, 2014, a mere three business days from this date.

## ARGUMENT

7. There are sound reasons to stay all proceedings in Region A regarding Category 1 license applications.

8. Although the Commission is an administrative agency, Massachusetts courts have provided guidance on when a stay of proceedings is warranted. Courts generally consider (1) the likelihood of success of the challenge, (2) whether a party will suffer irreparable harm if a stay is not granted, (3) the balance of harms between the parties if a stay is granted, and (4) whether the public interest would be furthered by granting a stay. *See Realty Cent. LLC v. Re/Max of New*

*England, Inc.*, 62 Mass. App. Ct. 1121, *4 (App. Ct. 2005); *In re Power Recovery Sys., Inc.*, 950 F.2d 798, 803 n.31 (1st Cir. 1991); *citing Morgan v. Kerrigan*, 523 F.2d 917, 920 (1st Cir. 1975).

9. Courts also balance the harm of a delay against the benefits of economy of resources and orderly adjudication. *See Dir. of Div. of Employment Sec. v. Town of Mattapoisett*, 392 Mass. 858, 861 (1984); *Town of Barnstable v. Cape Wind Assoc., LLC*, 27 Mass. L. Rptr. 111, *12 (Sup. Ct. 2010).

10. The above factors weigh strongly in favor of staying the Category 1 licensing proceedings for Region A, including the current timeline for negotiation and arbitration with respect to potential agreements between the City and the two Region A casino applicants.

11. *First*, the City will have to devote considerable costs, including legal fees, as well as time and other resources from City Hall, to negotiate and/or arbitrate agreements with the applicants. If there is no stay and expanded gaming is later repealed in November, the City will have needlessly incurred significant expenses. A stay until the outcome of the referendum – a delay of merely four months – will not prejudice any of the parties. The balance of harms plainly weighs in favor of granting a stay.

12. *Second*, a stay is in the public interest because any action the City takes with respect to the ongoing negotiation and arbitration process may unfairly impact voters.

13. *Third*, recent reports have shown that support for expanded gambling has waned since the enactment of the Enhanced Gaming Act,[1] making it likely that expanded gaming will be repealed.

[1] *See, e.g.*, Mark Arsenault, After Initial Fanfare, Skepticism on Casinos Grows, *The Boston Globe*, June 20, 2014.

14. Other courts that have considered the merits of granting stays in the face of upcoming citizens' referenda have found in favor of protecting the voters' rights and suspending intervening action that potentially could be rendered moot or reversed by the outcome at the ballot box. *See, e.g., Assembly of State of Cal. v. Deukmejian*, 30 Cal. 3d 638 (Cal. Sup. Ct. 1982) ("It has long been our judicial policy to apply a liberal construction to the power of initiative and referendum wherever it is challenged in order that the right be not improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it.") (internal quotations omitted); *Lindelli v. Town of San Anselmo*, 111 Cal. App. 4th 1099 (Cal. App. Ct. 2003) ("An essential component of referendum power is the ability to stay legislation until voters have had the opportunity to approve or reject it.").

15. As the Commission itself has stated, it "respects the decision of the Supreme Judicial Court to allow the citizens of the Commonwealth to vote on the repeal of expanded gaming in November." Ordering a stay of all proceedings in Region A until the outcome of the November election would be in accordance with the Commission's commitment to a "participatory, transparent and fair" process.

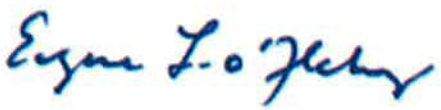
## CONCLUSION

For these reasons, the City respectfully requests that the Commission order an immediate suspension of all proceedings regarding the issuance of a Category 1 license in Region A, pending the outcome of the November referendum.

Respectfully submitted,

CITY OF BOSTON

By its attorneys,



Eugene L. O'Flaherty, BBO No. 567653
Corporation Counsel
Alexis Finneran Tkachuk, BBO. No. 662725
CITY OF BOSTON LAW DEPARTMENT
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alexis.tkachuk@boston.gov

DATED: June 27, 2014

# Exhibit 1

468 Mass. 478

Editor's Note: Additions are indicated by Text and deletions by ~~Text~~ .

Stephen P. ABDOW & others [1]

v.

ATTORNEY GENERAL & others. [2]

**Synopsis**

**Background:** Voters filed complaint seeking mandamus relief, challenging decision of Attorney General, declining to certify voters' initiative petition to prohibit casino and slots gambling and abolish parimutuel wagering on simulcast greyhound races. A single justice of the Supreme Judicial Court, Spina, J., reported the case to the full Court.

**Holdings:** The Supreme Judicial Court, Gants, J., held that:

[1] initiative would not result in an unconstitutional taking of gaming licenses without compensation;

[2] initiative would not violate any implied contractual right to a final decision by Gaming Commission regarding a license application;

[3] initiative petition was not a measure of purely local concern;

[4] initiative petition did not violate related subjects requirement of state constitution; and

[5] Attorney General's summary of initiative was fair.

Ordered accordingly; remanded.

West Headnotes (15)

[1] **Election Law**
- Pre-Election Challenges or Review

Supreme Judicial Court reviews the Attorney General's decision whether to certify an initiative petition de novo. M.G.L.A. Const.Amend. Art. 48.

Cases that cite this headnote

[2] **Election Law**
- Construction and Operation in General

State constitutional amendment governing requirements for initiative petitions is to be construed to support the people's prerogative to initiate and adopt laws. M.G.L.A. Const.Amend. Art. 48.

Cases that cite this headnote

[3] **Statutes**
- Matters Subject to Initiative

**Statutes**
- Sufficiency and Certification

Initiative petition to prohibit casino and slots gambling and abolish parimutuel wagering on simulcast greyhound races would not result in an unconstitutional taking of gaming licenses without compensation, such as would require Attorney General to deny certification of the petition; abolition of certain types of gambling would not constitute a taking of private property without compensation from those licensed to engage in such gambling operations, but instead, possibility of abolition was one of the many foreseeable risks that casinos, slots parlors, and their investors took when they chose to apply for a license and invest in a casino or slots parlor. M.G.L.A. Const.Amend. Art. 48; M.G.L.A. c. 23K, § 1 et seq.

Cases that cite this headnote

[4] **Statutes**
- Matters Subject to Initiative

**Statutes**
- Sufficiency and Certification

Initiative petition to prohibit casino and slots gambling and abolish parimutuel wagering on simulcast greyhound races would not result in an unconstitutional taking without compensation, such as would require Attorney General to deny certification of the petition, by violating

a gaming license applicant's implied contractual right to a final decision by Gaming Commission regarding the license application; an applicant for a gaming license had no implied contractual right to a final decision by Commission regarding its license application. M.G.L.A. Const.Amend. Art. 48; M.G.L.A. c. 23K, § 1 et seq.

Cases that cite this headnote

[5] **Statutes**
Matters Subject to Initiative

**Statutes**
Sufficiency and Certification

Initiative petition to prohibit casino and slots gambling and abolish parimutuel wagering on simulcast greyhound races was not a measure of purely local concern, such as would require Attorney General to deny certification of the petition; although impact of measure would have greatest impact on host communities, measure would significantly change the statutory definition of "illegal gaming" that applied statewide, with the objective of prohibiting casinos, slots parlors, and simulcast greyhound wagering throughout the entire commonwealth. M.G.L.A. Const.Amend. Art. 48; M.G.L.A. c. 23K, § 1 et seq.

Cases that cite this headnote

[6] **Statutes**
Matters Subject to Initiative

The purpose of the local matters exclusion in the state constitutional amendment governing certification of initiative petitions is to ensure that only matters of statewide concern are put before the voters in an initiative petition; matters of purely local or regional concern are not appropriately decided by all Massachusetts voters. M.G.L.A. Const.Amend. Art. 48.

Cases that cite this headnote

[7] **Statutes**
Matters Subject to Initiative

The local matters exclusion in the state constitutional amendment governing certification of initiative petitions does not require that a proposed statute have uniform, statewide application; that a measure might affect some municipalities more than others and differently from others does not necessarily mean that it is prohibited under the local matters exclusion. M.G.L.A. Const.Amend. Art. 48.

Cases that cite this headnote

[8] **Statutes**
Matters Subject to Initiative

In determining whether an initiative petition is invalid under the local matters exclusion in the state constitutional amendment governing certification of initiative petitions, the crucial question is whether the measure is restricted to particular municipalities; a proposed act, which on its face applies uniformly to all municipalities in the commonwealth, is not excluded from the initiative process. M.G.L.A. Const.Amend. Art. 48.

Cases that cite this headnote

[9] **Statutes**
Matters Subject to Initiative

For an initiative petition to be invalid under the local matters exclusion in the state constitutional amendment governing certification of initiative petitions, the restriction to a particular town, city or other political subdivision or to particular districts or localities must be specified in the law itself in terms which expressly or by fair implication are geographically descriptive of territorial divisions of the commonwealth. M.G.L.A. Const.Amend. Art. 48.

Cases that cite this headnote

[10] **Statutes**
Title and Text of Proposed Statute; Single-Subject Rule

**Statutes**
Sufficiency and Certification

Initiative petition to prohibit casino and slots gambling and abolish parimutuel wagering on simulcast greyhound races did not violate related subjects requirement of state constitutional amendment governing certification of initiative petitions, such as would require Attorney General to deny certification of the petition; operational connection of initiative was that three particular types of gaming, currently permitted under the laws of the commonwealth, all regulated or to be regulated by the Gaming Commission, would effectively be rendered illegal. M.G.L.A. Const.Amend. Art. 48; M.G.L.A. c. 23K, § 1 et seq.

Cases that cite this headnote

[11] **Statutes**

Title and Text of Proposed Statute; Single-Subject Rule

An initiative petition does not fail the relatedness requirement of state constitutional amendment governing certification of initiative petitions just because it affects more than one statute, as long as the provisions of the petition are related by a common purpose. M.G.L.A. Const.Amend. Art. 48.

Cases that cite this headnote

[12] **Statutes**

Sufficiency and Certification

**Statutes**

Explanatory Statements; Result Statements

Attorney General's summary of proposed initiative to prohibit casino and slots gambling and abolish parimutuel wagering on simulcast greyhound races was fair, as required by state constitutional amendment governing certification of initiative petitions; statement that initiative would prohibit wagering on the simulcasting of live greyhound races was a fair summary of Attorney General's understanding of the meaning of the language in the initiative and its operation and effect. M.G.L.A. Const.Amend. Art. 48; M.G.L.A. c. 23K, § 1 et seq.

Cases that cite this headnote

[13] **Election Law**

Summaries, Explanatory Statements, and Statements of Purpose

To be "fair," as required for an Attorney General's summary of an initiative petition to be valid under state constitution, the summary must not be partisan, colored, argumentative, or in any way one sided, and it must be complete enough to serve the purpose of giving the voter who is asked to sign a petition or who is present in a polling booth a fair and intelligent conception of the main outlines of the measure. M.G.L.A. Const.Amend. Art. 48.

Cases that cite this headnote

[14] **Election Law**

Summaries, Explanatory Statements, and Statements of Purpose

Under the amendment to state constitution governing requirements for Attorney General's summary of initiative petitions, the Attorney General is not required to conduct a comprehensive legal analysis of the measure, including possible flaws; all the constitution demands is a summary. M.G.L.A. Const.Amend. Art. 48.

Cases that cite this headnote

[15] **Election Law**

Summaries, Explanatory Statements, and Statements of Purpose

The Attorney General's judgment concerning the form and content of a summary of an initiative petition is entitled to some deference; exercise of discretion by the Attorney General, a constitutional officer with an assigned constitutional duty, should be given weight in any judicial analysis of the fairness and adequacy of a summary under the state constitution. M.G.L.A. Const.Amend. Art. 48.

Cases that cite this headnote

*Initiative. Gaming, Pari Mutuel Wagering. Attorney General. Constitutional Law,* Initiative petition, Taking of property, Police power. *Due Process of Law,* Taking of property. *Elections,* Ballot, Validity of petition. *Contract,* Implied. *License.*

CIVIL ACTION commenced in the Supreme Judicial Court for the county of Suffolk on September 10, 2013.

The case was reported by *Spina, J.*

**Attorneys and Law Firms**

*Thomas O. Bean* (*H. Reed Witherby* with him) for the plaintiffs.

*Carl Valvo* for George Ducharme & others.

*Peter Sacks,* State Solicitor, for the defendants.

*Mary Katherine Geraghty, Timothy J. Fazio, & Jennifer L. Morse,* for Daniel Rizzo & others, were present but did not argue.

*Edward M. Pikula,* City Solicitor, & *Frank E. Antonucci,* for Dominic J. Sarno & others, were present but did not argue.

The following submitted briefs for amici curiae:

*Daniel O'Connell* for Massachusetts Competitive Partnership.

*Brian D. Tobin* for Massachusetts Council of Churches & others.

*Ellen Weiss Freyman & William J. Smith* for Affiliated Chambers of Commerce of Greater Springfield & another.

*Thomas R. Landry* for New England Regional Council of Carpenters.

*Jonathan M. Silverstein & Janelle M. Austin* for town of Plainville.

*Donald J. Siegel & Jasper Groner* for Massachusetts Building Trades Council.

*Melinda M. Phelps & Jennifer K. Cannon* for Greater Springfield Convention and Visitors Bureau, Inc.

*Edward L. Sweda, Jr.,* for Public Health Advocacy Institute.

*Nicole Micheroni* for Coalition of Citizens and Community Leaders.

*Brian T. Corrigan* for Stop Predatory Gambling.

Present: Ireland, C.J., Spina, Cordy, Botsford, Gants, Duffly, & Lenk, JJ.

**Opinion**

GANTS, J.

*1 The issue presented on appeal is whether an initiative petition meant to prohibit casino and slots gambling and abolish parimutuel wagering on simulcast greyhound races meets the requirements set forth in art. 48 of the Amendments to the Massachusetts Constitution and, therefore, may be considered by voters at the November Statewide election. The Attorney General concluded that it did not and, accordingly, declined to certify it for inclusion on the ballot. The plaintiffs, ten Massachusetts voters who submitted the proposed initiative for certification, filed a complaint challenging the Attorney General's decision and sought an order requiring the Attorney General to certify the petition. We conclude that the Attorney General erred in declining to certify, and grant the requested relief so that the initiative may be decided by the voters at the November election. [1]

*Background.* 1. *The Expanded Gaming Act of 2011.* In November, 2011, the Legislature enacted the Expanded Gaming Act, St.2011, c. 194(act), that created the Gaming Commission (commission), and for the first time permitted casino and slots gambling in Massachusetts by those awarded gaming licenses by the commission. The act authorized the commission to award three licenses to qualified applicants to operate gambling casinos with table games and slot machines (category 1 or casino license), and another license to operate a gaming establishment with only slot machines (category 2 or slots parlor license).[4] G.L. c. 23K, §§ 2, 19, 20. The act also transferred the authority to license and regulate the racing industry from the State Racing Commission to the commission. See St.2011, c. 194, §§ 38, 40.

Pursuant to the act, the application process for casino and slots parlor licenses is in two phases. First, the commission determines whether the applicant is suitable for a license, based on various detailed criteria. See G.L. c. 23K, §§ 12, 15; 205 Code Mass. Regs. §§ 111.00, 114.00–117.00 (2013). Only those applicants found suitable in the first phase reach the second phase, where the commission considers the specific characteristics of the site proposed, based on other detailed criteria. See G.L. c. 23K, §§ 12 (c ), 18; 205

Code Mass. Regs. §§ 118.00–119.00 (2014). Although the commission has the authority to issue three casino licenses and one slots parlor license, it is not obligated to issue any license. See G.L. c. 23K, § 19 (*a* ) (commission may decide not to award any casino license where it is "not convinced" any applicant "has both met the eligibility criteria and provided convincing evidence that [it] will provide value to the region ... and to the commonwealth"); G.L. c. 23K, § 20 (*a* ) (same with respect to slots parlor license). An applicant who is denied a license by the commission has no entitlement to further review of the decision. G.L. c. 23K, § 17 (g ) ("[C]ommission shall have full discretion as to whether to issue a license. Applicants shall have no legal right or privilege to a gaming license and shall not be entitled to any further review if denied by the commission").

*2 To be eligible to receive a casino or slots parlor license, the applicant must pay an initial nonrefundable application fee of $400,000, and an additional amount "if the costs of the investigation exceed the initial application fee."[5] G.L. c. 23K, § 15(11). If an applicant reaches phase two of the application process, the applicant may be required to pay further surcharges to cover the commission's additional cost of investigation.[6] 205 Code Mass. Regs. § 118.08 (2014).

An applicant who is awarded a license is required to pay a license fee of $85 million for a casino license and $25 million for a slots parlor license. See G.L. c. 23K, §§ 10 (*d* ), 11 (*b* ); 205 Code Mass. Regs. § 121.01 (2014). In addition, successful applicants are required to commit to a minimum capital investment of at least $500 million for a casino license and $125 million for a slots parlor license. See G.L. c. 23K, §§ 10 (*a* ), 11 (*a* ); 205 Code Mass. Regs. § 122.02 (2013). A casino license is valid for fifteen years, and a slots parlor license is valid for five years. See G.L. c. 23K, §§ 19 (*b* ), 20 (*e* )-(*f* ). But all licenses are subject to suspension or revocation on various grounds, as set forth in G.L. c. 23K, §§ 1(9), 4(15), 23 (*a* )-(*b* ).

No category 1 license to operate a casino has been awarded by the commission. There are two applicants currently in phase two of the application process in region A. With respect to region B, the commission recently voted to award the license to MGM Springfield subject to "a finding by the Supreme Judicial Court invalidating the ballot initiative at issue in [this case] or ... the rejection of the repeal petition in the November 6, 2014 general election." In region C, the Governor entered into, and the Legislature approved, a compact with the Mashpee Wampanoag Tribe (tribe) to operate a gaming establishment in Taunton that the tribe had the option, subject to several conditions, to acquire under an Intergovernmental Agreement. The application process of one applicant in region C is still in phase one, but those found suitable in phase one for regions A and B are not required to submit a new phase one application for region C.[7] In contrast, the commission decided in February, 2014, to award the category 2 license to an applicant to operate a slots parlor at the Plainridge harness racing track in Plainville, and the applicant presumably paid the required $25 million licensing fee.[8]

2. *Initiative petition.* The act, apart from enacting G.L. c. 23K, which creates the commission and describes the application process to obtain casino and slots parlor licenses, also amended the definition of "[i]llegal gaming" in G.L. c. 4, § 7, Tenth. Before the act, "illegal gaming" was defined to "include every act punishable under any law relative to lotteries, policy lotteries or policy, the buying and selling of pools or registering of bets." G.L. c. 4, § 7, Tenth. The act redefined "illegal gaming" to mean:

> *3 "a banking or percentage game played with cards, dice, tiles or dominoes, or an electronic, electrical or mechanical device or machine for money, property, checks, credit or any representative of value, but excluding: (i) a lottery game conducted by the state lottery commission, under sections 24, 24A and 27 of chapter 10; (ii) a game conducted under chapter 23K; (iii) pari-mutuel wagering on horse races under chapters 128A and 128C and greyhound races under said chapter 128C; (iv) a game of bingo conducted under chapter 271; and (v) charitable gaming under said chapter 271."

G.L. c. 4, § 7, Tenth, as amended by St.2011, c. 194, § 3. Among the consequences of the revised definition of "illegal gaming" was that "a game conducted under [c.] 23K," that is, gaming at casinos and slots parlors licensed by the commission, was excluded from the definition, as was parimutuel wagering on simulcast greyhound races under G.L. c. 128C.

The initiative petition seeks to ban casino and slots gambling that had been made legal under the act and abolish parimutuel wagering on simulcast greyhound races. It attempts to accomplish this in two steps. First, it would amend yet again the definition of "illegal gaming" in G.L. c. 4, § 7, Tenth, by eliminating from the list of exclusions "a game conducted under [c.] 23K," and "pari-mutuel wagering on ... greyhound races under [c.] 128C."[9] Second, it seeks to add a provision to c. 23K that would effectively nullify all the other provisions of c. 23K by prohibiting any "illegal gaming," as redefined in G.L. c. 4, § 7, Tenth, and by prohibiting the commission from accepting or approving any application to conduct "illegal gaming."[10]

Under art. 48, The Initiative, II, § 3, as amended by art. 74, § 1, of the Amendments to the Massachusetts Constitution, after ten qualified voters sign and submit an initiative petition, the petition is filed with the Secretary of the Commonwealth only if the Attorney General certifies that the petition is in proper form for submission to the voters, that it is not substantially the same as a petition submitted to the voters in either of the two preceding biennial state elections, and that "it contains only subjects not excluded from the popular initiative and which are related or which are mutually dependent." One of the subjects excluded from the popular initiative is a "proposition inconsistent with ... [t]he right to receive compensation for private property appropriated to public use." Art. 48, The Initiative, II, § 2.

After reviewing the petition to determine if it complied with the requirements of art. 48, the Attorney General, in a letter dated September 4, 2013, declined to certify the petition. The Attorney General made clear that "applicants for gaming licenses will have no property rights in any licenses they may receive at the end of the application process," but she concluded that G.L. c. 23K created an "implied contract[ ]" between the commission and license applicants whereby those "who accepted the [c]ommission's invitation to apply, and paid substantial application and additional investigation fees, ... have an implied contractual right to *[c]ommission action on their applications* in accordance with statutory and regulatory criteria" (emphasis in original). In essence, she concluded that an applicant has an implied contractual right to a decision by the commission regarding its application for a license in accordance with G.L. c. 23K, but not an implied contractual right to a license it may be awarded by the commission under G.L. c. 23K. The Attorney General determined that, because the proposed law would prohibit the commission from approving any application for a license, it would result in a "taking" without compensation of applicants' implied contractual right to have the application process "play out in accordance with G.L. c. 23K," and therefore could not be the subject of an initiative petition under art. 48, The Initiative, II, § 2, because it was inconsistent with the "right to receive compensation for private property appropriated to public use."

*4 On September 10, 2013, the plaintiffs filed a complaint in the county court "for relief in the nature of mandamus" against the Attorney General and the Secretary of the Commonwealth, claiming that the denial of certification was in error and seeking an order compelling the Attorney General to certify the petition. On September 13, the single justice, with the agreement of all parties, entered an order, pending final decision in the case, requiring the Attorney General to release a summary of the initiative petition to the Secretary, who was instructed to take all the steps that he would have been required to take under art. 48 had the petition been certified, short of printing the proposed law in the Information for Voters guide or on the ballot. One of those steps was for the Secretary to issue blank forms containing the Attorney General's summary, so that the plaintiffs could attempt to obtain the required number of qualified voter signatures before the deadline. The requisite signatures were timely submitted, and, as required under art. 48, The Initiative, II, § 4, the petition was transmitted to the clerk of the House of Representatives. No legislative action has been taken regarding the petition. The resolution of this appeal shall determine whether the initiative petition will be decided by the voters at the November election.

Three different groups of registered voters moved to intervene in the action to present arguments not relied on by the Attorney General in her decision not to certify the petition (and rejected by the Attorney General in her brief). On February 24, 2014, the single justice allowed the motions to intervene, and reserved and reported the case to the full court.[11]

Collectively, the Attorney General and the interveners contend that there are five independent reasons why the initiative petition may not be certified in accordance with art. 48:(1) the petition, if enacted, would result in an unconstitutional taking without compensation of any gaming licenses awarded by the commission, and therefore is inconsistent with the "right to receive compensation for private property appropriated to public use"; (2) the petition, if enacted, would result in an unconstitutional taking

without compensation of a gaming license applicant's implied contractual right to a final decision by the commission regarding the license application; (3) the petition violates art. 48's exclusion of proposed measures whose "operation ... is restricted" to particular cities or towns of the Commonwealth, because it is a measure purely of local concern to four cities or towns that would be the host communities of the licensed casinos and slots parlor; (4) the petition's subjects—the elimination of casino and slots gaming and the abolition of existing parimutuel wagering on simulcast greyhound racing—are not sufficiently related to satisfy art. 48's "related subjects" requirement; and (5) even if the petition otherwise complies with art. 48, the Attorney General's summary of the petition is not "fair" as required by art. 48. We address each of these arguments in turn.

*5 [1] [2] *Discussion.* We review the Attorney General's decision whether to certify an initiative petition de novo. *Mazzone v. Attorney Gen.*, 432 Mass. 515, 520, 736 N.E.2d 358 (2000). In conducting our review, we acknowledge "the firmly established principle that art. 48 is to be construed to support the people's prerogative to initiate and adopt laws." *Carney v. Attorney Gen.*, 451 Mass. 803, 814, 890 N.E.2d 121 (2008) (*Carney II*), quoting *Yankee Atomic Elec. Co. v. Secretary of the Commonwealth*, 403 Mass. 203, 211, 526 N.E.2d 1246 (1988).

[3] 1. *Alleged taking of gaming license.* The interveners argue that, where a licensee relies on statutory inducements to obtain a license and complies with the applicable legal requirements, the licensee has "a right to conduct gaming operations in accordance with the license free from revocation at the pleasure of the Commonwealth," and the gaming license itself constitutes property that cannot be taken by the Commonwealth without just compensation. We reject this argument as wholly inconsistent with the long-standing principle that the Legislature cannot surrender its broad authority to regulate matters within its core police power, which includes the regulation of gambling and the prerogative to ban forms of gambling that previously had been legal.

In *Stone v. Mississippi*, 101 U.S. 814, 817, 819, 25 L.Ed. 1079 (1879), the Mississippi Legislature in 1867 granted a charter to a private company to conduct a lottery in the State for twenty-five years in return for $5,000, an annual tax of $1,000, and one and one-half per cent of the lottery receipts. One year later, a provision in the Mississippi Constitution was adopted that forbade the authorization of a lottery and the sale of lottery tickets. *Id.* at 819. The plaintiffs, who were operating the lottery, claimed that the constitutional amendment did not repeal the charter because to do so would impair the obligation of contracts, in violation of art. 1, § 10, of the United States Constitution. *Id.* at 816–817. The United States Supreme Court noted that an unconstitutional impairment of the obligation of contract can only occur where there *is* a contract, and therefore asked whether the State, by granting the lottery company a twenty-five year charter, had entered into a contract that bound it irrevocably to permit a lottery for the next twenty-five years. *Id.* The Court recognized that "[w]hether the alleged contract exists, ... depends on the authority of the legislature to bind the State and the people of the State in that way." *Id.* at 817. The Court declared that a "legislature cannot bargain away the police power of a State," that is, a Legislature cannot curtail the power of its successors to make whatever laws they deem proper in matters within the scope of the police power. *Id.* at 817–818. The Court determined that, although it is difficult to define the scope of the police power, it plainly "extends to all matters affecting the public health or the public morals," *id.* at 818, and lotteries, as "a species of gambling," *id.* at 821, fall squarely within the police power. *Id.* at 818. Therefore, the Court concluded that the plaintiffs had no property interest in a lottery contract but simply "a license to enjoy the privilege on the terms named for the specified time, unless it be sooner abrogated by the sovereign power of the State." *Id.* at 821. The Court warned, "Any one, therefore, who accepts a lottery charter does so with the implied understanding that the people, in their sovereign capacity, and through their properly constituted agencies, may [revoke] it at any time when the public good shall require, whether it be paid for or not." *Id.*

Similarly, in *Mugler v. Kansas*, 123 U.S. 623, 653–655, 8 S.Ct. 273, 31 L.Ed. 205 (1887), the plaintiffs built breweries when the manufacture and sale of beer in Kansas was legal, but in 1881 the State prohibited the manufacture and sale of "intoxicating liquors, except for medical, scientific, and mechanical purposes." The plaintiffs claimed that prohibiting them from manufacturing beer was an unconstitutional taking of property for public use. *Id.* at 664. The United States Supreme Court rejected the taking claim, concluding that "[a] prohibition simply upon the use of property for purposes that are declared, by valid legislation, to be injurious to the health, morals, or safety of the community, cannot, in any just sense, be deemed a taking or an appropriation of property for the public benefit." *Id.* at 668–669. The Court noted that the legislative power to protect "the health, the morals, or the safety of the public is not—and, consistently with the existence and safety of organized society, cannot be—

burdened with the condition that the State must compensate such individual owners for pecuniary losses they may sustain, by reason of their not being permitted ... to inflict injury upon the community." *Id.* at 669. The Court acknowledged that, when the plaintiffs built their breweries, the laws of the State permitted the manufacture of beer, but declared that "the State did not thereby give any assurance, or come under an obligation, that its legislation upon that subject would remain unchanged." *Id.*

*6 We have applied the reasoning in *Stone* and *Mugler* to the regulation of various forms of gambling. We, too, recognize the difficulty in defining the police power, and have noted that it has two meanings. The core police power "includes the right to legislate in the interest of the public health, the public safety and the public morals." *Boston Elevated Ry.* v. *Commonwealth*, 310 Mass. 528, 552, 39 N.E.2d 87 (1942), quoting *Smith* v. *New England Aircraft Co.*, 270 Mass. 511, 522, 170 N.E. 385 (1930). The broader definition adds to the core police power "the right to legislate for the public welfare," and arguably encompasses the full breadth of State power. *Boston Elevated Ry., supra*, quoting *Smith, supra*. See *Opinion of the Justices*, 341 Mass. 760, 785, 168 N.E.2d 858 (1960); *Boston Elevated Ry., supra* at 551-553, 39 N.E.2d 87. In matters within the "narrower signification" of the police power, we have adopted the Federal rule that "the police power cannot be bargained away" by precluding future legislative change that is necessary to protect public health, public safety, and public morals. See *Opinion of the Justices, supra*, quoting *Boston Elevated Ry., supra* at 553, 39 N.E.2d 87.

The regulation of gambling has historically been recognized as a matter that falls squarely within the core police power. See *Stone*, 101 U.S. at 821; *Commonwealth* v. *Wolhurst*, 319 Mass. 291, 294, 65 N.E.2d 552 (1946) ( "suppression of gambling lies within the domain of the police power of the Commonwealth"). Therefore, we have declared that "[h]orse racing with the pari-mutuel system of betting ... is a form of gambling which has been legalized by the Legislature but which because of the nature of the business can be abolished at any time that the Legislature may deem proper for the safeguarding and protection of the public welfare." *Selectmen of Topsfield* v. *State Racing Comm'n*, 324 Mass. 309, 315, 86 N.E.2d 65 (1949). More recently, when voters in 2008 sought certification of an initiative petition that would ban parimutuel dog racing, we rejected the claim that the initiative would result in a taking of property without compensation from dog track owners and thereby run afoul of art. 48. See *Carney II*, 451 Mass. at 813-817, 890 N.E.2d 121. In answer to the claim that the proposed law would constitute a taking of the track owners' expectation of continued renewal of their racing licenses, we concluded that "whatever interest the plaintiffs may have in their licenses, it does not entitle them to compensation in the event that legislation duly enacted by either the Legislature or the people eliminates all parimutuel dog racing in the Commonwealth." *Id.* at 815, 890 N.E.2d 121. We noted that "gambling on dog races is a heavily regulated industry that only exists by virtue of legislatively created narrow exceptions to common-law and statutory bans," *id.* at 817, 890 N.E.2d 121, and, "because of the nature of the business," it can be abolished at any time the Legislature deems proper.[12] *Id.*, quoting *Selectmen of Topsfield, supra*.

*7 We see no reason to depart from our precedent in *Carney II*. Consequently, we conclude that, under the core police power, the Legislature and, through the initiative, the voters of Massachusetts may choose to abolish casino and slots parlor gambling and parimutuel wagering on simulcast greyhound races, and doing so would not constitute a taking of property without compensation.

In the circumstances of this case, this conclusion would not change even were we to apply the broader meaning of the police power. In matters beyond the core police power, we have not precluded the Legislature, where necessary to assure those who will be making investments beneficial to the public welfare, from binding itself and the electorate not to revoke legislation relied on by those making such investments for a reasonable number of years, or from agreeing to provide fair compensation if it were to revoke the legislation. See *Opinion of the Justices*, 341 Mass. at 785-786, 168 N.E.2d 858; *Boston Elevated Ry.*, 310 Mass. at 553-554, 39 N.E.2d 87. But where we have concluded that the Legislature bound itself to forgo future legislative change or revocation, or to provide fair compensation if it were to do so, the Legislature clearly manifested such an intent, either by describing its commitment as contractual, by expressly promising not to revoke a legislative provision, or by declaring an entitlement to fair compensation in the event of revocation. See, e.g., *Dimino* v. *Secretary of Commonwealth*, 427 Mass. 704, 708-710, 695 N.E.2d 659 (1998) (contractual obligation barred initiative to abolish tolls on Massachusetts turnpike where enabling act and trust agreements required authority to collect tolls sufficient to cover its debt obligations, and trust agreements provided that bonds were to be secured in part by revenues generated by authority); *Boston Elevated*

*Ry., supra* at 545 & n. 1, 554, 39 N.E.2d 87 (Legislature may not declare right to operate elevated railway forfeited without compensation where statute provided that company's right to use location was not subject to revocation by Legislature if construction was completed within three years, and provided for fair compensation if revoked). In short, "[f]or a contract to arise from a statute there must be a clear intention of the Legislature that a statute be so interpreted." *Milton v. Commonwealth*, 416 Mass. 471, 475, 623 N.E.2d 482 (1993). There is no such manifestation of legislative intent here. The Legislature did not characterize the grant of a casino or slots parlor license as a contract, [13] or commit itself not to revoke the legislation it had enacted authorizing and regulating such gambling, or promise fair compensation to casinos or slots parlors if it were again to abolish such gambling. To the contrary, the act steers well clear of any language that would suggest that casino or slots parlor owners have any contractual or other entitlements that would potentially render the Commonwealth liable to compensate them for their losses.

In sum, the abolition of casino and slots parlor gambling, and of parimutuel wagering on simulcast greyhound racing, whether by the voters or the Legislature, would not constitute a taking of private property without compensation from those licensed to engage in such gambling operations, and therefore an initiative calling for their abolition is not inconsistent with the right to receive compensation for private property appropriated to public use. Instead, the possibility of abolition is one of the many foreseeable risks that casinos, slots parlors, and their investors take when they choose to apply for a license and invest in a casino or slots parlor. We acknowledge the arguments made by the interveners and amici that an initiative petition would put at risk the substantial investment that has been made by the applicants in applying for the casino licenses and by the slots parlor licensee in obtaining its license, including the license fee of $25 million. [14] But, as with the lottery company in *Stone* and the breweries in *Mugler*, substantial economic loss arising from a change in law under the core police power does not constitute a taking of private property that triggers an entitlement to fair compensation. We acknowledge as well the argument that the risk of abolition arising from an initiative petition might discourage the applicants from proceeding with their applications, particularly given the large investment required, or, if the initiative were to prevail, might discourage gaming companies in the future from seeking such licenses if the Legislature or the voters were again to legalize casino or slots parlor gambling. We acknowledge, too, the argument that abolition through the initiative might even affect nongambling companies' estimation of Massachusetts as a reliable place to do business. These arguments may properly be considered by the voters in deciding how to vote on the initiative, but they have no relevance to the determination whether the petition meets the legal requirements of an initiative and should be included on the November ballot.

*8 [4] 2. *Alleged taking of implied contractual right to final decision by commission regarding license applications.* The Attorney General agrees that a casino or slots parlor has no property right in a license and that the abolition of casino or slots parlor gambling would not result in a taking of any private property in such a license without just compensation. But the Attorney General nonetheless contends that the initiative petition would result in a taking without compensation because it would prohibit the commission from approving any application and, therefore, deny applicants their implied contractual right to a final determination by the commission regarding their applications. We disagree.

From a commonsense perspective, it would be peculiar if an applicant who obtains a casino or slots parlor license and pays the licensing fee has no property right arising from contract in the license, but an applicant who seeks a license has a property right arising from contract to a determination by the commission whether it should receive a license that it will not be able to use if casino and slots gambling is abolished. Implicit in the Attorney General's argument is that, because gambling falls within the core police power, there is no contractual right to a gaming license, but the application for a gaming license is separate and distinct from the operation of a gaming establishment and therefore falls outside the scope of the police power. We reject this distinction and this departure from common sense. The application for a gaming license is a necessary prerequisite to obtain a gaming license, and legislation governing who, if anyone, is eligible to receive such a license is as much within the scope of the core police power as legislation regarding the license itself. The same core police power that authorizes the Legislature (or, as here, the voters acting through the initiative) to abolish casino and slots parlor gambling also authorizes the cessation of the process that otherwise might result in the award of a gaming license.

The Attorney General rests her conclusion that an applicant has an implied contractual right to a final determination by the commission regarding its application for a gaming

license on appellate case law interpreting the public bidding law, G.L. c. 149, §§ 44A–44J. The Appeals Court has held that where a public contracting authority did not give fair consideration to a properly submitted bid in accordance with the law, the public contracting authority broke the implied contract formed by the submission of the bid, and the bidder was entitled to recover the costs of preparing the bid. See *Paul Sardella Constr. Co. v. Braintree Hous. Auth.*, 3 Mass.App.Ct. 326, 333, 329 N.E.2d 762 (1975), *S. C.*, 371 Mass. 235, 356 N.E.2d 249 (1976) (*Sardella* ). See also *E. Amanti & Sons v. Barnstable*, 42 Mass.App.Ct. 773, 778, 679 N.E.2d 1028 (1997). The Appeals Court reasoned in *Sardella*, *supra* at 334, 329 N.E.2d 762:

> *9 "The award of reasonable bid preparation costs for the failure to give fair consideration to a bidder in accordance with the statutory procedure will best effectuate the legislative objectives underlying the statute by insuring the widest competition among responsible bidders. Notwithstanding possible short-term benefit to an awarding authority in a particular case through violation of the statute, over the longer term harm to the public interest would ensue if awarding authorities are not to be held accountable for their violations. The number of bidders, and thus the range of choice available to an awarding authority, may well be reduced if it were to be assumed by prospective bidders that such an authority would not abide by the applicable statutes in making its awards."

The Attorney General acknowledges that the "analogy" between competitive bidding under the public bidding law and the application for a casino or slots parlor license "is not perfect," but fails to recognize that it is fundamentally flawed. First, public bidding is part of a process that leads to a contract between the awarding authority and the prevailing bidding contractor for the construction or repair of a public building, so it is reasonable to imply a contractual obligation by the awarding authority to act in accordance with the statute in deciding who will be the bidder awarded the contract. In contrast, an application for a casino or slots parlor license is not part of a process that may lead to a contract between the commission and the applicant; if the applicant prevails, it will receive only a license, that is, "a revocable privilege." G.L. c. 23K, § 1(9).

Second, the rationale for the implied contract in *Sardella* was to ensure that the awarding authority would comply with the statutory bidding law and thereby encourage bid competition by assuring potential bidders that they would be considered in accordance with law. *Sardella*, 3 Mass.App.Ct. at 332–333, 329 N.E.2d 762, quoting *Interstate Eng'g Corp. v. Fitchburg*, 367 Mass. 751, 758, 329 N.E.2d 128 (1975). In contrast, the implied contract proposed by the Attorney General would be wholly divorced from this rationale. If the initiative were to be enacted, the commission would be complying with the law, not violating it, by declining to approve an application. There would be no statutory purpose in encouraging applicants, because no gaming licenses would be issued by the commission. Moreover, the implied contract proposed by the Attorney General would in essence interpret the act as providing applicants with an enforceable legal right to a determination by the commission regarding their application, even though the act provides applicants with no enforceable legal rights and contains strong language suggesting that the Legislature intended to give them none. See G.L. c. 23K, § 17 (*g* ) ("Applicants shall have no legal right or privilege to a gaming license ..."). There is no language in the act or other reason to believe that the Legislature intended to give applicants an implied contractual right to a decision regarding their applications.

Third, even if the Legislature had intended to create an implied contractual right to a licensing decision by the commission, an implied condition of any such contract would be that casino and slots parlor gambling remains legal and that a gaming license would actually permit the opening of a gaming establishment. The Attorney General contends that, even if such gambling were abolished in the Commonwealth, the award of a license would still be of value to an applicant because validation by the commission might persuade licensing authorities in other States to award the applicant a comparable license. But the Legislature established the commission as a licensing authority, not a validation authority, and could not reasonably have anticipated that it would proceed to render licensing decisions if casino and slots parlor gambling were abolished by the electorate. See G.L. c. 23K, § 2 ("Applicant" defined as "a person who has applied for a license to *engage in activity* regulated under this chapter" [emphasis added] ).[15]

*10 We conclude that an applicant for a gaming license has no implied contractual right to a final decision by the commission regarding its license application. Therefore, we conclude that the Attorney General erred in determining that the initiative's prohibition of the approval of such an application would constitute a taking that is inconsistent with the right to receive compensation for private property appropriated to public use.

[5] 3. *Local matters exclusion.* The Springfield group of intervenors argues that the petition violates art. 48 because it proposes a measure whose operation would be restricted to particular municipalities within the Commonwealth. Article 48 states in relevant part that "[n]o measure ... the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the commonwealth ... shall be proposed by an initiative petition." Art. 48, The Initiative, II, § 2. This is often referred to as the "localities" or "local matters" exclusion. [16]

[6] The purpose of the local matters exclusion is to ensure that only matters of Statewide concern are put before the voters in an initiative petition. Matters of purely local or regional concern are not appropriately decided by all Massachusetts voters. See *Carney II*, 451 Mass. at 811, 890 N.E.2d 121; *Thompson v. Attorney Gen.*, 413 Mass. 21, 23, 594 N.E.2d 853 (1992); *Massachusetts Teachers Ass'n v. Secretary of the Commonwealth*, 384 Mass. 209, 224, 424 N.E.2d 469 (1981). See also 2 Debates in the Massachusetts Constitutional Convention 1917–1918, at 693 (1918) ("the intention was to exclude purely local matters, matters that were not State wide matters").

[7] The local matters exclusion, however, "does not require that a proposed statute have uniform, Statewide application." *Carney II, supra*, quoting *Massachusetts Teachers Ass'n*, 384 Mass. at 224, 424 N.E.2d 469. That a measure might affect some municipalities more than others and differently from others does not necessarily mean that it is prohibited under the local matters exclusion. See, e.g., *Carney II, supra* at 810–813, 890 N.E.2d 121 (initiative petition proposing Statewide ban on parimutuel dog racing not prohibited by local matters exclusion, even though dog racing tracks operated in only two municipalities); *Ash v. Attorney Gen.*, 418 Mass. 344, 347–348 & n. 7, 636 N.E.2d 229 (1994) (initiative petition proposing Statewide ban on rent control not prohibited by local matters exclusion, even though only seven municipalities were authorized by Legislature to adopt some form of rent control or review); *Massachusetts Teachers Ass'n, supra* at 222–226, 424 N.E.2d 469 (initiative petition proposing Statewide two and one-half per cent limit on municipal property tax rate not prohibited by local matters exclusion, even though it would result in "different consequences in various municipalities" depending on existing property tax rates).

[8] [9] The crucial question is whether the measure is "restricted" to particular municipalities. "A proposed act, which on its face applied uniformly to all municipalities in the Commonwealth, is not excluded from the initiative process...." *Ash*, 418 Mass. at 348, 636 N.E.2d 229. To be excluded under the local matters exclusion, "the restriction to a particular town, city or other political subdivision or to particular districts or localities must be specified in the law itself in terms which expressly or by fair implication are geographically descriptive of territorial divisions of the Commonwealth." *Mount Washington v. Cook*, 288 Mass. 67, 74, 192 N.E. 464 (1934), cited with approval in *Carney II*, 451 Mass. at 811, 890 N.E.2d 121; *Ash, supra* at 348, 636 N.E.2d 229; and *Massachusetts Teachers Ass'n*, 384 Mass. at 224, 424 N.E.2d 469.

*11 The initiative petition in this case is plainly a matter of Statewide—not mere local or regional—concern. It seeks to prohibit casinos, slot machines, and all games conducted under G.L. c. 23K, and parimutuel wagering on simulcast greyhound races under G.L. c. 128C, in *all* cities and towns in Massachusetts, not just in those cities and towns where they are presently licensed or where license applications are being considered. In this respect, it is not meaningfully different from the measures banning live dog racing and rent control, respectively, in the *Carney II* and *Ash* cases. Those municipalities in which the G.L. c. 23K licensing process is already underway or in which simulcast greyhound wagering already exists pursuant to G.L. c. 128C, like the municipalities that hosted dog racing in *Carney II* or imposed rent control in *Ash*, stand to be affected differently from others, but that would be nothing more than a practical consequence of enacting a Statewide ban. It does not mean that the ban, or the effect of the ban, would be restricted to those municipalities within the meaning of the local matters exclusion.

Moreover, although the economic impact of the Statewide ban proposed in the initiative would be greatest on the host communities (or prospective host communities), the impact would be Statewide. The anticipated jobs from the construction and operation of the planned casinos and

slots parlor would not be limited to those residing in the host communities; nor would the visitors to the casinos and slots parlor come only from the host communities. The tax revenues anticipated from the operation of these establishments, and from the income earned by contractors and employees, would have Statewide impact. The adverse consequences of casino and slots parlor gambling claimed by some of the amici, including an increase in those suffering the psychological, social, and economic effects of "gambling disorder," an increase in the rate of bankruptcies, especially among restaurants, and higher crime rates, if they were to occur, would also not be limited to residents of the host communities and would be felt Statewide.

In short, a measure that would significantly change the statutory definition of "illegal gaming" that applies Statewide, with the objective of prohibiting casinos, slots parlors, and simulcast greyhound wagering throughout the entire Commonwealth, is quintessentially the type of Statewide matter that may be addressed under art. 48 in an initiative petition. Nothing in the measure, either expressly or by fair implication, restricts its operation to particular municipalities within the meaning of the local matters exclusion.

*12 [10] 4. *Related subjects requirement.* All three groups of interveners contend that the initiative petition cannot be placed on the ballot because it violates the so-called "relatedness" or "related subjects" requirement of art. 48, which states that an initiative petition must "contain[ ] only subjects ... which are related or which are mutually dependent."[17] Art. 48, The Initiative, II, § 3, as amended by art. 74. The decisions of this court illustrate how we have endeavored to construe the related subjects requirement in a balanced manner that fairly accommodates both the interests of initiative petitioners and the interests of those who would ultimately vote on the petition. On the one hand, the requirement must not be construed so narrowly as to frustrate the ability of voters to use the popular initiative as "the people's process" to bring important matters of concern directly to the electorate; the delegates to the constitutional convention that approved art. 48 did, after all, permit more than one subject to be included in a petition, and we ought not be so restrictive in the definition of relatedness that we effectively eliminate that possibility and confine each petition to a single subject. See *Massachusetts Teachers Ass'n*, 384 Mass. at 219–220 & nn. 9, 10, 422 N.E.2d 1362. On the other hand, relatedness cannot be defined so broadly that it allows the inclusion in a single petition of two or more subjects that have only a marginal relationship to one another, which might confuse or mislead voters, or which could place them in the untenable position of casting a single vote on two or more dissimilar subjects. See generally *Carney v. Attorney Gen.*, 447 Mass. 218, 224–232, 850 N.E.2d 521 (2006) (*Carney I*).

Thus, in the *Massachusetts Teachers Ass'n* case, the court described the governing standard as "[w]hether the subjects dealt with in [the petition] are germane to a general subject, at least to the extent that one cannot rightly say that they are unrelated." *Id.* at 219, 424 N.E.2d 469, citing *Opinion of the Justices*, 309 Mass. 555, 561, 34 N.E.2d 431 (1941). The court explained:

> "Of course, the general subject of an initiative proposal cannot be so broad as to render the 'related subjects' limitation meaningless. If, however, one can identify a common purpose to which each subject of an initiative petition can reasonably be said to be germane, the relatedness test is met. It is not for the courts to say that logically and consistently other matters might have been included or that particular subjects might have been dealt with differently. Unlike the situation in other States, the single subject concept has not been a part of the legislative process in this Commonwealth, and we see no justification for importing that concept into the less restrictive limitation of 'related subjects' " (footnote omitted).

*Massachusetts Teachers Ass'n*, *supra* at 219–220, 424 N.E.2d 469. See *Albano v. Attorney Gen.*, 437 Mass. 156, 161, 769 N.E.2d 1242 (2002); *Mazzone v. Attorney Gen.*, 432 Mass. at 528–529, 736 N.E.2d 358 ("We have not construed this requirement narrowly nor demanded that popular initiatives be drafted with strict internal consistency.... We have, instead, required only that the subjects of a petition have a 'common purpose' " [citations omitted]).

*13 In the *Carney I* case, we began by quoting with approval the principles set forth in the *Massachusetts Teachers Ass'n* and *Mazzone* cases, but went on to add significant language ensuring that the related subjects requirement would not be defined too broadly:

> "The relatedness limitation requires the Attorney General to scrutinize the aggregation of laws proposed in the initiative petition for its impact at the polls. At some high level of abstraction, any two laws may be said to share a 'common purpose.' The salient inquiry is: Do the similarities of an initiative's provisions dominate what each segment provides separately so that the petition is

> sufficiently coherent to be voted on 'yes' or 'no' by the voters? That is the crux of the relatedness controversy.... This question is not susceptible to bright-line analysis.
>
> "...
>
> "The language, structure, and history of art. 48 all suggest that any initiative presenting multiple subjects may not operate to deprive the people of a 'meaningful way' to express their will.... It is not enough that the provisions in an initiative petition all 'relate' to some same broad topic at some conceivable level of abstraction.... To clear the relatedness hurdle, the initiative petition must express an operational relatedness among its substantive parts that would permit a reasonable voter to affirm or reject the entire petition as a unified statement of public policy. A broader interpretation of the common purpose requirement would undercut the very foundations of the relatedness limitation." (Citations omitted.)

*Carney I*, 447 Mass. at 225, 226, 230–231, 850 N.E.2d 521.

The provisions of the proposed measure in this case share a significant "common purpose," are not so loosely tied together as to render the related subjects requirement meaningless, and are operationally related in a way that would "permit a reasonable voter to affirm or reject the entire petition as a unified statement of public policy." The measure would redefine "illegal gaming" in a way that is intended to prohibit casinos, slots parlors, and simulcast greyhound wagering. It is, in its essence, a measure to limit the forms of gambling. The operational connection is that these three particular types of gaming, currently permitted under the laws of the Commonwealth, all regulated or to be regulated by the commission, would effectively be rendered illegal. Moreover, these three types of gaming are themselves operationally related. Casinos typically offer table games, slot machines, and wagering on simulcast live dog racing. The commission may grant a simulcasting license only to casino and slots parlor licensees, and to those previously licensed to conduct horse or dog racing under G.L. cc. 128A and 128C.[18] G.L. c. 23K, § 7 (*b*). The unified statement of public policy reflected in the petition is the constriction of the types of gaming permitted by law in Massachusetts, and a reasonable voter would be given a meaningful opportunity to decide whether to continue to legalize these three forms of gaming, or to prohibit them and thereby limit legal gambling in Massachusetts essentially to horse racing, lotteries, and charity events. There is no likelihood that a reasonable voter would find this petition confusing or misleading.

The interveners rely heavily on the *Carney I* decision to support their contention that the subjects of the present petition are not related within the meaning of art. 48. The facts in *Carney I*, however, were markedly different. In that case, the initiative petitioners combined within a single petition two very different types of changes to Massachusetts law. The proposed measure, entitled "An Act to protect dogs," declared that its purpose was to "further protect dogs and puppies in the state." *Carney I*, 447 Mass. at 219, 220 n. 7, 850 N.E.2d 521. The first two substantive sections of the measure would have added or amended certain criminal statutes aimed directly at punishing those who abuse or neglect dogs. *Id.* at 221–222, 850 N.E.2d 521. The final substantive section would have dismantled the parimutuel dog racing business in Massachusetts, *id.* at 222, 850 N.E.2d 521, a business that the court described as "an established, highly regulated enterprise" that had been operating legitimately in Massachusetts for more than seventy years. *Id.* at 219–220, 850 N.E.2d 521. Very significantly, the latter provision was identical to an initiative petition that had been submitted to, and narrowly rejected by, the voters six years earlier. *Id.* at 222, 850 N.E.2d 521. It was in this context that the court concluded that the subjects of the petition did not bear the requisite relatedness to one another, that they could be said to be "related" only at an impermissibly high level of abstraction (protecting dogs), and that the proponents were engaged in the sort of "logrolling" that the delegates sought to prevent when they adopted the related subjects requirement of art. 48.[19] *Id.* at 227, 231–232, 850 N.E.2d 521. The very controversial proposal to prohibit parimutuel dog racing had been hitched to the more popular, less controversial proposal to toughen the criminal laws regarding the abuse and neglect of dogs, thereby placing voters in the position of having to vote up or down a single petition that did not express "a unified statement of public policy." *Id.* at 231–232, 850 N.E.2d 521.

*14 In contrast, all of the provisions in the petition before us can reasonably be understood to be antigaming provisions, meant to redefine (and limit) the scope of permissible gambling in the Commonwealth. That is the "common purpose" to which all the provisions are "germane." *Massachusetts Teachers Ass'n.*, 384 Mass. at 219–220, 424 N.E.2d 469. That is the dominant thrust of each provision and the "operational relatedness" among them. *Carney I*, 447 Mass. at 230, 850 N.E.2d 521. And, in contrast with the petition in *Carney I*, the petition does not contain a radically diverse "mixture of criminal law and administrative overhaul." *Id.* at 231, 850 N.E.2d 521.

It is not fatal to the petition that the proposed measure does not seek to prohibit all forms of gambling in Massachusetts. The "unified statement of public policy" called for by *Carney I*, 447 Mass. at 230–231, 850 N.E.2d 521, does not require that an initiative petition be a comprehensive piece of legislation that would entirely cover its field. It requires that the portion of the field covered by the petition be presented in a way that permits a reasonable voter to make an intelligent up or down choice. See *id.* at 226, 850 N.E.2d 521. Provided the subjects are sufficiently related, the choice as to the scope of an initiative petition is a matter for the petitioners, not the courts. *Massachusetts Teachers Ass'n.*, 384 Mass. at 220, 424 N.E.2d 469 ("It is not for the courts to say that logically and consistently other matters might have been included or that particular subjects might have been dealt with differently").

*15 Nor is it necessary that all of an initiative's supporters share the same motivations. The interveners note that some of the supporters appear to be interested primarily in prohibiting the licensing of casinos and a slots parlor, with less concern for simulcast greyhound wagering, while another faction of supporters appears to be interested primarily in the protection of greyhounds, with less concern for casinos and a slots parlor. Evidence of differing motivations is relevant to the relatedness analysis, because it might bear on the likelihood of "logrolling," but it is far from dispositive. Where, as here, the petition's provisions are operationally related with a common purpose and set forth a unified statement of public policy, all who favor the petition need not support it for the same reason.

[11] Finally, we reject the interveners' argument that the subjects of the petition are not related because the measure's change in the definition of "illegal gaming" would have consequences under an assortment of other statutes as well. See, e.g., G.L. c. 139, § 19 (allowing lessor to void lease when tenant engages in, among other things, illegal gaming); G.L. c. 180, § 5 (providing for review of proposed charitable corporations to determine whether any proposed incorporators, officers, or other principals have been engaged in, among other things, illegal gaming, such that proposed corporation would be used to cover or shield illegal business or practices); G.L. c. 271, § 22 (punishing receipt and delivery of certain letters and packages connected to illegal gaming); G.L. c. 271, § 47 (placing restrictions on installation of telephones for persons convicted of illegal gaming). Each of the affected statutes is itself logically related to the petition's aim to curtail illegal gaming by limiting the types of gaming that are permitted. "A measure does not fail the relatedness requirement just because it affects more than one statute, as long as the provisions of the petition are related by a common purpose." *Albano*, 437 Mass. at 157–158, 161–162, 769 N.E.2d 1242 (rejecting relatedness challenge to initiative measure that would have restricted civil marriage to "union of one man and one woman" and denied "benefits or incidents exclusive to marriage" to other relationships even though enactment of that measure would have affected "various statutes that relate to rights and responsibilities of marriage, including those laws that affect one's ability to inherit, to file taxes, to make medical decisions about a spouse, and to file wrongful death claims").

In sum, we agree with the Attorney General that the initiative petition in this case satisfies the related subjects requirement of art. 48.

*16 [12] 5. *Attorney General's summary.* Finally, the interveners contend that the Attorney General's summary of the proposed measure does not meet the requirements of art. 48. Article 48, as amended by art. 74, calls for the crafting of a "fair" and "concise" summary, "as determined by the attorney general." This summary is required to be printed on the pages used by initiative petitioners to gather the required voter signatures (art. 48, The Initiative, II, § 3, as amended by art. 74); on the ballot itself (art. 48, The Initiative, III, as amended by art. 74); and in the Information for Voters booklet sent by the Secretary to registered voters before the election (art. 48, The Initiative, IV, as amended by art. 74). The Attorney General's summary of the measure in this case states:

> "This proposed law would (1) prohibit the Massachusetts Gaming Commission from issuing any license for a casino or other gaming establishment with table games and slot machines, or any license for a gaming establishment with slot machines; (2) prohibit any such casino or slots gaming under any such licenses that the Commission might have issued before the proposed law took effect; and (3) prohibit wagering on the simulcasting of live greyhound races.
>
> "The proposed law would change the definition of 'illegal gaming' under Massachusetts law to include wagering on the simulcasting of live greyhound races, as well as table games and slot machines at Commission-licensed casinos, and slot machines at other Commission-licensed gaming establishments. This would make those types of gaming subject to existing state laws providing criminal penalties

for, or otherwise regulating or prohibiting, activities involving illegal gaming.

"The proposed law states that if any of its parts were declared invalid, the other parts would stay in effect."

[13] [14] [15] The interveners challenge the summary's fairness, not its conciseness. To be "fair," a summary "must not be partisan, colored, argumentative, or in any way one sided, and it must be complete enough to serve the purpose of giving the voter who is asked to sign a petition or who is present in a polling booth a fair and intelligent conception of the main outlines of the measure." *Sears v. Treasurer & Receiver Gen.*, 327 Mass. 310, 324, 98 N.E.2d 621 (1951). "The Attorney General is not required to conduct a comprehensive legal analysis of the measure, including possible flaws. All the Constitution demands is a summary." *Mazzone*, 432 Mass. at 532, 736 N.E.2d 358. See *Ash*, 418 Mass. at 349–350, 636 N.E.2d 229; *Associated Indus. of Mass. v. Secretary of the Commonwealth*, 413 Mass. 1, 12, 595 N.E.2d 282 (1992) ("Nothing in art. 48 requires the summary to include legal analysis or an interpretation"). Moreover, as we review the summary to determine whether the Attorney General has fulfilled her constitutional obligation, we keep in mind that "[t]he Attorney General's judgment concerning the form and content of the summary is entitled to some deference." *Id.* at 11, 595 N.E.2d 282. "Obviously, an element of discretion is involved in the preparation of a summary—what to include, what to exclude, and what language to use. The exercise of discretion by the Attorney General, a constitutional officer with an assigned constitutional duty, should be given weight in any judicial analysis of the fairness and adequacy of a summary." *Massachusetts Teachers Ass'n.* 384 Mass. at 230, 424 N.E.2d 469.

The interveners' primary challenge to the summary in this case is that it inaccurately states that the proposed measure would "change the definition of 'illegal gaming' under Massachusetts law to include wagering on the simulcasting of live greyhound races," and thus "prohibit wagering on the simulcasting of live greyhound races." They claim, in essence, that the measure does not accomplish what the petitioners intend, that is, that the measure, even if enacted, would not actually prohibit wagering on the simulcasting of live greyhound races. They argue that the "base definition" of "illegal gaming" in G.L. c. 4, § 7, Tenth, i.e., "a banking or percentage game played with cards, dice, tiles or dominoes, or an electronic, electrical or mechanical device or machine for money, property, checks, credit or any representative of value," does not include wagering on the simulcasting of live greyhound races, so the measure's striking of the exclusion for parimutuel wagering on "greyhound races under said [c.] 128C" in G.L. c. 4, § 7, Tenth, would have no practical consequence, because parimutuel wagering on greyhound races would still not fall within the definition of "illegal gaming."

*17 The Attorney General, in defense of her summary, argues that parimutuel wagering on simulcast greyhound races is included within the base definition of "illegal gaming" in G.L. c. 4, § 7, Tenth, because it is a "percentage game" in that the licensee takes a percentage of the total amount wagered, see G.L. c. 128A, § 5, and *Donovan v. Eastern Racing Ass'n, Inc.*, 324 Mass. 393, 396, 86 N.E.2d 903 (1949); it is "gaming" in that it involves bets on the physical ability of animals, see *id.* at 394, 86 N.E.2d 903; and it is "played with ... an electronic, electrical or mechanical device or machine" because, she maintains, all winnings are required by statute to "be calculated by a totalisator machine or like machine." See G.L. c. 128A, § 5 (*a*). She also argues that the Legislature, when it amended G.L. c. 4, § 7, Tenth, in 2011, must have understood simulcast greyhound wagering to be within the base definition of "illegal gaming," because it expressly listed it among the exclusions from that definition for the purpose of making it lawful when conducted by a licensee under G.L. c. 128C.

We acknowledge the disagreement regarding whether the initiative, if enacted, will have the intended effect of prohibiting parimutuel wagering on simulcast greyhound races, and we further recognize that, if the measure is enacted, this court may be called on to resolve that question. Notwithstanding the disagreement, the Attorney General must still craft a fair summary and, in doing so, must inevitably form her own understanding of the meaning of the language in the initiative and its operation and effect.[20] We give deference to the judgment of the Attorney General regarding the content of the summary. *Associated Indus. of Mass.*, 413 Mass. at 11, 595 N.E.2d 282. Because, for the reasons she has stated, her understanding of the measure is reasonable, and because her understanding is plainly consistent with what is intended by the initiative's proponents, we conclude that her summary is fair. And because the summary will accurately inform the voters of precisely what they are being asked to do with respect to wagering on simulcast greyhound racing—that is, abolish it—a reasonable voter cannot possibly misunderstand the measure's intended effect.

We decline the interveners' invitation to resolve now the dispute whether the interveners' or the Attorney General's interpretation of the measure is correct as a matter of law. The same general principles that restrain us from deciding, before an initiative measure is passed, whether the measure would be unconstitutional (except for deciding whether the measure's subjects are "excluded matters" under art. 48) also counsel restraint in deciding whether a measure would or would not have the legal effect intended. See *Carney II*, 451 Mass. at 820-821, 890 N.E.2d 121 (noting "pragmatic concerns about ripeness" and constitutionally rooted limitations on court's power to interfere with legislative process in progress); *Bowe v. Secretary of the Commonwealth*, 320 Mass. 230, 247, 69 N.E.2d 115 (1946) ("The people acting by means of the initiative, like the General Court, can enact measures that violate the fundamental and supreme law of the Constitution and that consequently have no force or effect. But no court can interfere with the process of legislation, either by the General Court or by the people, before it is completed, to prevent the possible enactment of an unconstitutional measure"). See also *Mazzone*, 432 Mass. at 532, 736 N.E.2d 358 (rejecting argument that summary was unfair because it did not mention aspect of initiative that challengers claimed violated Federal law). In circumstances like these, the proper time for deciding definitively whether the measure has the desired legal effect will come if and when the measure is passed.[21] In the meantime, the pros and cons of the measure, including its possible legal flaws, are best left to public debate in the electoral process. See *id.* at 532-533, 736 N.E.2d 358. See also *Gilligan v. Attorney Gen.*, 413 Mass. 14, 20, 595 N.E.2d 288 (1992); G.L. c. 54, §§ 52-54.

***18** We can dispose quickly of the interveners' remaining challenges to the summary. They claim, first, that the proposed measure's deletion of the phrase "and greyhound races under [c.] 128C" is ineffectual because, as part of the act, c. 128C has been repealed effective July 31, 2014 (see St.2011, c. 194, §§ 41, 112) and, as of that date, the commission will have the responsibility under G.L. c. 23K for administering and enforcing the laws related to parimutuel wagering and simulcasting (see St.2011, c. 194, §§ 11, 12, 17).[22] The gist of this claim, like the one previously discussed, is that the proposed measure will not have its intended effect. The Attorney General reasonably disputes that legal analysis. For essentially the same reasons as stated above, we conclude that a definitive resolution of the issue at this time would be premature, and that the interveners' claim that the proposed measure is ineffectual on this ground does not render the Attorney General's summary unfair.

Second, the interveners argue that the summary is unfair because it states that "wagering on the simulcasting of live greyhound races" would henceforth be prohibited, whereas, according to the interveners, only parimutuel wagering would be prohibited. The absence of the word "parimutuel" from the summary is not fatal, as no other form of simulcast wagering is presently permitted. See G.L. c. 128A, § 13. The summary clearly captures the "sum and substance" of the measure in this regard. *Sears*, 327 Mass. at 324, 98 N.E.2d 621. No additional level of detail is needed. See *Gilligan*, 413 Mass. at 19-20, 595 N.E.2d 288; *Associated Indus. of Mass.*, 413 Mass. at 11-12, 595 N.E.2d 282.

***19** Finally, the interveners claim that the summary is unfair in stating that if any of the "parts" of the proposed law "were declared invalid, the other parts would stay in effect," because a severability clause is inconsistent with art. 48's requirement that the subjects of an initiative petition be related. As with their other arguments, this is not an attack on the summary itself, but on the measure. Where § 3 of the proposed law states that "[t]he several provisions of this Act are independent and severable and the invalidity, if any, of any part ... shall not affect or render the remainder of the Act invalid or operative," the summary's statement regarding severability is a fair and accurate description, and it was prudent for the Attorney General to include it. See *Massachusetts Teachers Ass'n.*, 384 Mass. at 233, 424 N.E.2d 469 (in postelection constitutional challenge to enacted initiative, summary's failure to mention severability language might have been problematic if court had not rejected all challenges to its constitutionality). The legal effect of the severability language will ultimately be decided if and when the measure passes, the law is challenged, and one or more of its provisions is held invalid.

*Conclusion.* For the reasons stated above, we remand the case to the county court for entry of an order directing the Attorney General to certify the initiative petition.

*So ordered.*

**APPENDIX.**

**AN ACT RELATIVE TO ILLEGAL GAMING**

Be it enacted by the people and their authority:

SECTION 1.

Section 7 of chapter 4 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out clause Tenth and inserting in place thereof the following clause:

> "Tenth, 'Illegal gaming,' a banking or percentage game played with cards, dice, tiles or dominoes, or an electronic, electrical or mechanical device or machine for money, property, checks, credit or any representative of value, but excluding: (i) a lottery game conducted by the state lottery commission, under sections 24, 24A and 27 of chapter 10; (ii) pari-mutuel wagering on horse races under chapters 128A and 128C; (iii) a game of bingo conducted under chapter 271; and (iv) charitable gaming under said chapter 271."

SECTION 2.

*20 Chapter 23K of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by adding the following section 72 following section 71:

> "Notwithstanding the provisions of this chapter or any general or special law to the contrary, no illegal gaming as defined in section 7 of chapter 4 shall be conducted or permitted in this commonwealth and the commission is hereby prohibited from accepting or approving any application or request therefor."

SECTION 3.

The several provisions of this Act are independent and severable and the invalidity, if any, of any part or feature thereof shall not affect or render the remainder of the Act invalid or inoperative.

Supreme Judicial Court of Massachusetts,
Suffolk.

SJC–11641. | May 5, 2014. | June 24, 2014.

Parallel Citations

2014 WL 2808596 (Mass.)

Footnotes

1 Stephanie C. Crimmins, Joseph A. Curtatone, Geri Eddins, Mark A. Gottlieb, Celeste B. Meyers, Kristian M. Mineau, Kathleen Conley Norbut, John F. Ribeiro, and Susan C. Tucker.

2 Secretary of the Commonwealth; and George Ducharme, Anita A. Bird, Paul C. Picknelly, Frank Rossi, Joe Gentile, Jill McCarthy Payne, Ethel Griffin, Dave Nault, Deb Nault, Thomas Hazzard, Susan Hazzard, Joseph Pacheco, Patrick J. McCarthy, Lynn Percuoco, Tyler Crawford, Judith Ann Matt, Frank A. Rossi, Michelle Jeffrey, William G. Lagorio, Louis Ciarlone, Daralyn Reardon, Debra Sablone, Dominic J. Sarno, Don Silverman, Daniel Rizzo, Robert Taddia, Carol Kerr, Dawn Rogers, Michelle Barnaby, Deborah Little, Mario Fiore, Ray Caporale, Nicole Griffin, Donna Mahoney, Gary Ferragamo, Lucy Dello Russo, and Richard Covino, as interveners.

3 We acknowledge the amicus briefs submitted by Stop Predatory Gambling; Massachusetts Competitive Partnership; Public Health Advocacy Institute; Massachusetts Council of Churches, Episcopal Diocese of Western Massachusetts, Massachusetts Family Institute, Friends of Revere, Friends of East Boston, Rev. Nick Granitsas and Pastor Tim Bogertman of the First Congregational Church of Revere, Pastor Don Nanstad of Our Saviour's Lutheran Church, Dr. David Searles of the Central Assembly of God Church, Father Thomas Dornurat, Father George Szal, and Deacon Francis McHugh; Massachusetts Building Trades Council; Greater Springfield Convention and Visitors Bureau, Inc.; Coalition of Citizens and Community Leaders; town of Plainville; Affiliated Chambers of Commerce of Greater Springfield and Massachusetts Convention Center Authority; and New England Regional Council of Carpenters.

4 Under the Expanded Gaming Act of 2011, St.2011, c. 194(act), the Gaming Commission (commission) was authorized to grant casino licenses only within certain regions of Massachusetts, with only one license per region. The regions were region A, which included Suffolk, Middlesex, Essex, Norfolk, and Worcester counties; region B, which included Hampshire, Hampden, Franklin, and Berkshire counties; and region C, which included Bristol, Plymouth, Nantucket, Dukes, and Barnstable counties. G.L. c. 23K,

§ 19 (*a*). The slots parlor license was not limited by region. G.L. c. 23K, § 20. The act also authorized the Governor to enter into a compact with a federally recognized Native American tribe in the Commonwealth to operate a casino in region C. See St.2011, c. 194, § 2A; G.L. c. 23K, §§ 4, 67.

5 As of January 21, 2014, twelve applicants had paid the commission a total of at least $12.55 million in application fees and additional surcharges.

6 The three applicants who reached phase two in applying for the category 2 slots parlor license each paid an additional $500,000 to the commission to cover phase two costs.

7 An applicant found conditionally suitable in phase one in pursuit of the region A license (but who was unable to secure the required voters' approval in the applicable "host community") is apparently now seeking the region C license.

8 The commission intended to issue any casino gaming license in region A or B by April, 2014, and any casino license in region C by November, 2014. The former deadline was not met, however, and in light of this opinion and the commission's decision to postpone issuance of the category 1 license in region B until the results of the November 6, 2014, general election are known, it is doubtful that any casino license will be issued before then.

9 If the initiative petition were adopted, G.L. c. 4, § 7, Tenth, would provide as follows:

> "Tenth, 'Illegal gaming,' a banking or percentage game played with cards, dice, tiles or dominoes, or an electronic, electrical or mechanical device or machine for money, property, checks, credit or any representative of value, but excluding: (i) a lottery game conducted by the state lottery commission, under sections 24, 24A and 27 of chapter 10; (ii) ~~a game conducted under chapter 23K; (iii)~~ pari-mutuel wagering on horse races under chapters 128A and 128C ~~and greyhound races under said chapter 128C~~ ; ~~(iv)~~ [ (iii) ] a game of bingo conducted under chapter 271; and ~~(v)~~ [ (iv) ] charitable gaming under said chapter 271."

10 The full text of the initiative petition, entitled "An Act Relative to Illegal Gaming," is set forth in the appendix to this opinion.

11 One group, led by voter George Ducharme, initially included five entities who had applied to the commission for gaming licenses, but these entities, none of whom is a registered voter, ultimately did not join the Ducharme interveners' brief. See *Mazzone v. Attorney Gen.*, 432 Mass. 515, 517 n. 4, 736 N.E.2d 358 (2000). A second group consisted of voters from Springfield led by Dominic Sarno; the third group consisted of voters from Revere led by Daniel Rizzo. Sarno and Rizzo are the mayors of Springfield and Revere, respectively, but the single justice allowed them to intervene as "registered voters in their respective cities," not in their official capacities. See *id.*

12 In *Carney v. Attorney Gen.*, 451 Mass. 803, 816–817, 890 N.E.2d 121 (2008) (*Carney II*), we cited *Members of the Peanut Quota Holders Ass'n v. United States*, 421 F.3d 1323, (Fed.Cir.2005), cert. denied, 548 U.S. 904, 126 S.Ct. 2967, 165 L.Ed.2d 951 (2006), which declared:

> "The question ... is not whether the peanut quotas have aspects of property, but whether Congress must pay the owners of peanut quotas compensation when it takes steps that render the quotas less valuable, or even valueless. The answer is no, because the property interest represented by the peanut quota is entirely the product of a government program unilaterally extending benefits to the quota holders, and nothing in the terms of the statute indicated that the benefits could not be altered or extinguished at the government's election."

13 The act characterizes "any license awarded by the commission" as "a revocable privilege," not a contract, G.L. c. 23K, § 1(9), and declares that the commission is empowered to deny, suspend, or revoke a license "for any cause that the commission deems reasonable." *Id.* at § 4(15).

14 Although the commission's regulations had initially declared license fees to be "non-refundable," an emergency amendment to those regulations removed that language. Compare 205 Code Mass Regs. § 121.01(1), (2) (effective Feb. 24, 2014), with 205 Code Mass. Regs. § 121.01(1), (2) (2013). Accordingly, the commission's regulations are now silent as to whether license fees are refundable. We do not address whether the commission may refund a license fee if the voters enact the proposed law in the initiative petition and abolish casino and slots parlor gambling.

15 At oral argument, the Attorney General contended that, if the initiative were to pass, applicants whose applications were still awaiting a phase one or phase two determination by the commission would be entitled to a refund of the fees paid to obtain such a determination. We reject this contention for two reasons: applicants have no implied contractual right to a final determination by the commission, and the act declares that application fees are nonrefundable. See G.L. c. 23K, § 15(11).

16 The Attorney General did not expressly address the local matters exclusion in her letter denying certification. In her brief on appeal, she argues that the local matters exclusion does not apply to this initiative petition.

17 The Attorney General did not reach the issue of relatedness in her letter denying certification, but she argues in her brief that the proposed initiative petition satisfies the relatedness test.

18 Where a slots parlor licensee already had a simulcasting license under G.L. c. 128C as of July 1, 2011, a condition of its slots parlor license is to continue to conduct simulcast wagering. G.L. c. 23K, § 20 (*b* ).

19 " 'Logrolling' ... is defined as '[t]he legislative practice of including several propositions in one measure ... so that the legislature or voters will pass all of them, even though these propositions might not have passed if they had been submitted separately.' " *Carney v. Attorney Gen.*, 447 Mass. 218, 219 n. 4, 850 N.E.2d 521 (2006), quoting Black's Law Dictionary 960 (8th ed. 2004).

20 Such a disagreement about the effectiveness of language of an initiative petition is not itself a reason for the Attorney General to decline to certify the petition, provided the petition proposes a law, which it does here. See *Poisner v. Attorney Gen.*, 390 Mass. 593, 597-598, 458 N.E.2d 734 (1983). The interveners do not dispute that the petition proposes a law.

21 We are also mindful that, in circumstances like these, if the sponsors of an initiative petition have any residual doubt about the effectiveness of what they have proposed, they can pursue a perfecting amendment to ensure that the measure accomplishes what they intend it to do and what the Attorney General's summary states that it does. See art. 48, The Initiative, V, § 2, as amended by art. 81. See also *Massachusetts Teachers Ass'n v. Secretary of the Commonwealth*, 384 Mass. 209, 236-238, 424 N.E.2d 469 (1981) (upholding perfecting amendment that came after signatures were gathered and Legislature rejected measure; "No one was misled significantly by the error in the draftsmanship. The summary correctly stated the purpose of the proposal, although the summary and the text were incongruous until the perfecting change was made. Signatures were obtained pursuant to the summary. The change permitted the people to vote on the proposal in the form in which it was intended"). We ought not interrupt a process in progress, because of a claimed error, when the error, if any, can be cured.

22 The Attorney General notes in her brief that the commission is presently seeking legislation that would postpone these changes for two years.

# Exhibit 2

CITY OF BOSTON • MASSACHUSETTS

**Law Department**
City Hall, Room 615 Boston, MA 02201

**June 26th, 2014**

James F. McHugh
Acting Chairman McHugh and
Commissioners Cameron, Stebbins and Zuniga
Massachusetts Gaming Commission
84 State Street
Boston, MA 02109

Re: **Request to Stay Proceedings Relative to the Issuance of a Category 1 License in Region A**

Dear Acting Chairman McHugh and Commissioners Cameron, Stebbins and Zuniga:

As you are aware, on June 24, 2014, the Supreme Judicial Court issued an opinion in *Abdow v. Attorney General*, SJC-11641, which determined that the Attorney General erred in refusing to certify an initiative petition meant to prohibit casino gambling in Massachusetts for inclusion on the November ballot. The Court ruled that the initiative should be decided by the voters at the November election and ordered that the Attorney General be directed to certify the petition. Accordingly, on November 4, 2014 the citizens of the Commonwealth will decide whether to allow casino gambling in Massachusetts.

I was gratified to learn that the citizens of Boston will finally be given the opportunity to vote on this critical issue. We will know in a short time whether or not casino gambling will be permitted in Massachusetts. If casino gambling is prohibited, the issue of Category 1 Gaming Licenses in Region A will be moot. If it is allowed, I remain hopeful that the citizens of Boston will be able to vote on whether or not they approve of the pending casino proposals in Region A.

To prevent the needless expenditure of additional time, money and effort by the City of Boston, at a time when the future of casino gambling in Massachusetts is uncertain, the City respectfully requests that the Gaming Commission stay all proceedings before it concerning the issuance of a Category 1 License in Region A. Whatever the outcome of the November ballot initiative, it is prudent to pause to await that result.

Very truly yours,

Eugene L. O'Flaherty

Eugene L. O'Flaherty
Corporation Counsel
City of Boston

# Exhibit 3

MINTZ LEVIN

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June 26, 2014

**VIA E-MAIL AND FIRST CLASS MAIL**

Stephen Crosby, Chairman
Commissioner Gayle Cameron
Commissioner Enrique Zuniga
Commissioner James F. McHugh
Commissioner Bruce Stebbins
MASSACHUSETTS GAMING COMMISSION
84 State Street, 10th Floor
Boston, MA 02109

**Re: Notice of Intent to Commence Arbitration with the City of Boston**

Dear Chairman Crosby, and Commissioners Cameron, Zuniga, McHugh and Stebbins:

This letter is a notice of intent to commence arbitration with the City of Boston, issued on behalf of Wynn MA, LLC ("Wynn") pursuant to 205 CMR 125.01 (6)(c)(2). Wynn will work with the City of Boston to select a neutral, independent arbitrator or arbitrators and will submit its best and final offer for a surrounding community agreement pursuant to M.G.L. c. 23K, § 15(9) to the arbitrator(s) and the City of Boston on July 2, 2014.

Very truly yours,

Tony Starr

Samuel M. Starr

cc: Eugene O'Flaherty, Boston Corporation Counsel (*via e-mail: Eugene.O'Flaherty@boston.gov*)
John Ziemba, Massachusetts Gaming Commission *(via e-mail)*
Jennifer Mather McCarthy, Mintz Levin (*via e-mail)*
Jacqui Krum, Wynn Resorts (*via e-mail)*

MIRICK O'CONNELL

ATTORNEYS AT LAW

**Brian R. Falk**
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July 1, 2014

**VIA EMAIL to mgccomments@state.ma.us**

Hon. James F. McHugh
Massachusetts Gaming Commission
84 State Street, 10th Floor
Boston, MA 02109

Re: In the Matter of: Region A Licensing Proceedings

Dear Judge McHugh:

Enclosed for consideration by the Gaming Commission are the City of Revere's Comments in Opposition to the Motion to Stay Proceedings submitted by the City of Boston in the above-referenced matter.

Please feel free to contact me with any questions or concerns.

Sincerely,

Brian R. Falk

BRF/aer
Enclosure

cc: Hon. Daniel Rizzo, Mayor
Paul Capizzi, Esq., City Solicitor
John Festa, Director of Economic Development
George Anzuoni, Director of Finance

MASSACHUSETTS GAMING COMMISSION

In the Matter of:

REGION A CATEGORY 1 GAMING LICENSING PROCEEDINGS

**COMMENTS OF THE CITY OF REVERE IN OPPOSITION TO THE MOTION TO STAY PROCEEDINGS INVOLVING CATEGORY 1 LICENSE APPLICATIONS IN REGION A**

## Introduction

This memorandum is submitted in opposition to the Motion to Stay Proceedings Involving Category 1 License Applications in Region A submitted by the City of Boston ("Boston's Motion"). This memorandum demonstrates that a stay of proceedings is unwarranted based upon the factors set forth in Boston's Motion, and would, in fact, cause irreparable harm to a Host Community – the City of Revere. Therefore, the City of Revere respectfully requests that the Gaming Commission deny Boston's Motion.

## Argument

The City of Boston ("Boston"), a designated Surrounding Community, seeks a stay in the Gaming Commission's proceedings concerning the award of a Category 1 License in Region A until after the November 4, 2014 statewide referendum seeking to prohibit casino gaming in Massachusetts (the "November Referendum"). The City of Revere ("Revere") is a party in interest to the Region A licensing proceedings in its capacity as the Host Community to applicant Mohegan Sun Massachusetts, LLC ("Mohegan Sun").

Boston's Motion suggests that, in deciding whether to grant a stay of proceedings, the Gaming Commission should consider four factors set forth in *Realty Cent. LLC v. Re/Max of*

*New England, Inc.*, 62 Mass. App. Ct. 1121 (2005, Rule 1:28 unpublished disposition), as follows:

1. The likelihood of success of the challenge;
2. Whether a party will suffer irreparable harm if a stay is not granted;
3. The balance of harms between the parties if a stay is granted; and
4. Whether the public interest would be furthered by granting a stay.

See Boston's Motion, ¶8.

Given the clear guidelines governing a request for a variance from the Gaming Commission's regulations, Boston's Motion is out of order.[1] Assuming *arguendo* that the four factors cited by Boston should guide the Gaming Commission's decision in this matter, the Gaming Commission should deny Boston's Motion for the following reasons:

## I. THE LIKELIHOOD OF SUCCESS OF THE NOVEMBER REFERENDUM CANNOT BE FAIRLY ASSESSED.

In a motion to stay in a court proceeding, a judge applies legal standards to evaluate a party's likelihood of success on appeal. Instead of asking the Gaming Commission to consider legal arguments, Boston's Motion asks the Gaming Commission to play political pundit and predict the outcome of the November Referendum four months in advance. Boston's Motion relies on a June 20, 2014 *Boston Globe* article as evidence that the November Referendum is likely to repeal the Expanded Gaming Act. See Boston's Motion, ¶13. Recent opinion polls, however, present a complicated picture of the November Referendum. Two polls reported in late June (including a *Boston Globe* poll published one day prior to the article cited in Boston's Motion) suggest that the November Referendum may fail, leaving the Expanded Gaming Act

[1] See Memorandum of Mohegan Sun Massachusetts, LLC, in this matter. Revere has reviewed Mohegan Sun's submission and incorporates by reference the arguments contained therein.

intact.[2] [3] Regardless, the Gaming Commission has no reasonable or reliable basis to gauge the likelihood of success of the November Referendum, and therefore should not grant Boston's Motion.

## II. THE CITY OF REVERE WILL SUFFER IRREPARABLE FINANCIAL HARM IF A STAY IS GRANTED.

### A. Increased Municipal Costs Borne by Revere Taxpayers.

Under Mohegan Sun's Host Community Agreement with Revere (the "HCA", previously filed with the Gaming Commission), within 30 days after the award of a Category 1 License Mohegan Sun is obligated to make a payment of $6 million to Revere. See HCA, §2.B.1(a)(i). This payment, the first of several pre-opening payments from Mohegan Sun, will be used by Revere to offset increased municipal costs associated with hosting a resort casino, and to improve Revere's financial status. See "Affidavit of City of Revere Finance Director / Treasurer and Collector George M. Anzuoni", attached as Exhibit A (the "Anzuoni Affidavit"). The $6 million dollar payment is equivalent to 3.75% of Revere's current operating budget of $160 million.

If the Gaming Commission grants Boston's Motion, the $6 million payment will arrive too late for Revere to set its tax rate based upon this revenue source, thereby requiring that Revere residents and businesses foot a larger share of Revere's operating budget through higher taxes. See Anzuoni Affidavit. These higher taxes cannot be reduced once the delayed payment

[2] See Center for Policy Analysis at the University of Massachusetts Dartmouth, poll conducted from June 19-22, 2014 ("Among greater Boston (Region A) voters, 46% would currently vote to uphold the state's casino law, while 41% would vote to repeal it.") http://www.umassd.edu/cas/centers/cfpa.

[3] See David Scharfenberg, "Poll Shows Mass. Voters Still Support Casinos", *The Boston Globe*, June 19, 2014 ("Fifty-two percent of respondents say they would vote to keep the state's casino law in place if the question lands on the ballot this fall, while just 41 percent would repeal it.") http://www.bostonglobe.com/metro/2014/06/19/poll-shows-mass-voters-still-support-casinos/gahmXcnoURzKUpaTdC1umO/story.html.

arrives. See Anzuoni Affidavit. To address the serious cash flow problem posed by a late $6 million payment, Revere will need to rely on a larger amount of its reserve fund in order to balance the operating budget, which in turn could negatively affect Revere's bond rating and inflate borrowing costs for necessary municipal projects. See Anzuoni Affidavit.

In addition, within 30 days after Mohegan Sun obtains financing for its resort casino, Mohegan Sun is obligated to make a payment of $2 million towards the renovation of Revere's football field. See HCA, §2.D.1. Existing debt issued by Revere to pay for the football field project cannot be retired until the $2 million payment arrives. See Anzuoni Affidavit. Any delay in the award of the Region A license will delay the $2 million payment, harming Revere in two ways. First, Revere would end up paying additional interest on the football field debt. See Anzuoni Affidavit. Second, the football field debt would remain on Revere's books for a longer period of time, negatively impacting Revere's borrowing capacity. See Anzuoni Affidavit.

B. Wasted Municipal Resources Due to Shifting Permitting Timelines.

In anticipation of the award of the Region A license, Revere officials and Mohegan Sun representatives have spent countless hours planning for the complicated permitting work associated with the single largest commercial development in Revere's history. See "Affidavit of City of Revere Economic Development Director John Festa", attached as Exhibit B (the "Festa Affidavit"). Each time the anticipated date of award changes, Revere officials adjust schedules and timelines accordingly, diverting time and resources away from other important work. See Festa Affidavit. Much of the preliminary permitting work and bid documents for contractual services related to permitting assume a license award in early September of 2014. See Festa Affidavit. If the Gaming Commission grants Boston's Motion, Revere officials would, once again, need to divert time and resources in order to overhaul permitting timelines and

procurement processes. See Festa Affidavit. The delay would also require Revere officials to spend time duplicating prior work in order to review Mohegan Sun's submissions for staleness, and otherwise get back up to speed on a complex project. See Festa Affidavit.

C. Lost Economic Development Opportunities.

If Mohegan Sun receives a Category 1 License, Revere anticipates a wave of ancillary economic development projects on underutilized properties in the vicinity of Mohegan Sun's resort casino and nearby Revere Beach. See Festa Affidavit. Revere's marketability to developers, however, has suffered as a result of the prolonged licensing process in Region A, and a stay of proceedings will only worsen this problem. See Festa Affidavit. Any further delay in the licensing process will necessarily postpone new tax revenue to Revere, an untenable harm given Revere's financial constraints. Moreover, any further delay in the licensing process will result in the loss of an unknown number of development projects, as investors will be forced to decide between waiting indefinitely for a license award or pursuing opportunities outside Revere. See Festa Affidavit. Given Revere's financial constraints, a single lost economic development opportunity is one too many.

## III. THE HARM SUFFERED BY REVERE EXCEEDS ANY HARM TO BOSTON.

The only harms cited in Boston's Motion are "considerable costs, including legal fees, as well as time and other resources from City Hall" associated with Boston's Surrounding Community negotiations. Boston's Motion, ¶11. However, many (if not all) of Boston's identified costs may be eligible for reimbursement from Mohegan Sun and/or Gaming Commission grants. To the contrary, none of the additional known and unknown costs to Revere, described herein, are eligible for reimbursement. Given the relative size and wealth of Revere and Boston, any impact on Boston's $2.7 billion operating budget due to unreimbursed

expenses pales in comparison to the impact late mitigation payments, additional borrowing costs and lost economic development opportunities will have on Revere. For a sense of scale, in order to match the relative impact of Revere's $6 million payment (3.75% of its current operating budget), Boston's Surrounding Community agreement expenses would need to total $101 million. In addition, Revere has an Economic Development Department of one – John Festa – who must compete fiercely to attract developers to a city in need of investment. John Festa's counterpart in Boston is the Boston Redevelopment Authority, a multimillion-dollar agency that will continue to oversee billions of dollars in new development regardless of the location of the Region A casino.

## IV. THE PUBLIC INTEREST WILL BE HARMED IF A STAY IS GRANTED, BY WITHHOLDING CRUCIAL INFORMATION FROM VOTERS.

The electorate should have as much information concerning the Expanded Gaming Act as possible before casting their ballots in the November Referendum. Boston's Motion assumes that granting the Region A license before the November Referendum would unfairly impact voters. To the contrary, a stay in the Region A proceedings will prevent voters from knowing one of the most important components of the Expanded Gaming Act – the location of the Region A casino, likely the most lucrative in the Commonwealth. It would be contrary to the public interest if voters had an incomplete picture of the Expanded Gaming Act, due to an unwarranted stay in the Region A proceedings. In addition, the Gaming Commission issued the Penn National and MGM licenses under the cloud of the November Referendum, and has no logical basis for changing course in Region A at this time.

## Conclusion

For the reasons stated above, the City of Revere respectfully requests that the Gaming Commission deny Boston's Motion to Stay Proceedings Involving Category 1 License Applications in Region A.

Respectfully submitted,

THE CITY OF REVERE

By its attorneys,

Brian R. Falk, Esq. BBO #667425
Nicholas Anastasopoulos, Esq. BBO #634259
Mirick, O'Connell, DeMallie & Lougee, LLP
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(508) 791-8500
bfalk@mirickoconnell.com

Dated: July 1, 2014

EXHIBIT A

Affidavit of George M. Anzuoni

# AFFIDAVIT OF GEORGE M. ANZUONI

I, George M. Anzuoni, being first duly sworn, depose and say as follows:

1. I am the duly appointed Finance Director / Collector and Treasurer of the City of Revere, positions I have held for a total of 36 years.

2. In my official capacity, I am responsible for coordinating the setting of the City's tax rate, which takes place in November of each year, in accordance with municipal finance law.

3. The City's initial $6 million payment from Mohegan Sun Massachusetts, LLC ("Mohegan Sun"), due 30 days after the award of a license from the Gaming Commission, will be used by the City to offset increased municipal costs associated with hosting a resort casino, and to improve Revere's financial status.

4. If the City receives its initial $6 million payment from Mohegan Sun within 30 days after an early September license award date, the City may set its tax rate accordingly, thereby reducing the portion of the City's $160 million operating budget borne by residential and commercial property taxpayers.

5. A delay of the Gaming Commission's license award until some date after the November 4, 2014 state election will result in Mohegan Sun's $6 million payment arriving too late for the City to set its tax rate based upon this revenue source. As a result, Revere residents and businesses would be required to foot a larger share of Revere's operating budget than would otherwise be the case. Increased taxes resulting from the delayed $6 million payment cannot be refunded once the payment arrives.

6. The serious cash flow problem posed by a late $6 million payment will require the use of a larger amount of the City's reserve fund to balance the current operating budget. The use of the reserve fund in this manner could negatively affect Revere's bond rating, which would increase the City's borrowing costs for necessary municipal projects.

7. A delay of the Gaming Commission's license award until after the November 4, 2014 state election will delay Mohegan Sun's $2 million payment toward the City's football field renovation project. Debt issued by the City to pay for the football field project cannot be retired until the $2 million payment arrives. A delayed license award would require the City to make additional interest payments towards the football field debt and prolong the project's impact on Revere's borrowing capacity.

Executed under the pains and penalties of perjury this 1st day of July, 2014.

George M. Anzuoni

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

On July 1, 2014, before me, the undersigned notary public, personally appeared George M. Anzuoni (the "Principal"), and acknowledged to me that the Principal signed the preceding or attached document voluntarily for its stated purpose and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief. The Principal proved to me through satisfactory evidence of identification that the Principal is the person whose name is signed on the preceding or attached document. The satisfactory evidence of identification provided to me was:

☐ A current document issued by a federal or state government agency bearing the photographic image of the Principal's face and signature; or

☐ On the oath or affirmation of a credible witness unaffected by the document or transaction who is personally known to the notary public and who personally knows the Principal; or

☒ Identification of the Principal based on the notary public's personal knowledge of the identity of the Principal; or

☐ The following evidence of identification: _____

_____

Notary Public: Rita A. Johnson

Printed Name: Rita A. Johnson

My Commission Expires: 11/14/2019

*[Seal]*

RITA A. JOHNSON
NOTARY PUBLIC
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires Nov. 14, 2019

EXHIBIT B

Affidavit of John Festa

# AFFIDAVIT OF JOHN FESTA

I, John Festa, being first duly sworn, depose and say as follows:

1. I am the duly appointed Economic Development Director of the City of Revere, a position I have held for 2 ½ years. I am the sole staff member in the City's Economic Development Department.

2. In my official capacity, I am responsible for marketing the City to potential developers and assisting developers in navigating the City's land use permitting processes.

3. The resort casino proposed by Mohegan Sun Massachusetts, LLC ("Mohegan Sun") would be the single largest commercial development in the City's history.

4. In anticipation of the award of a gaming license to Mohegan Sun, City officials have spent countless hours meeting with Mohegan Sun representatives and planning for the complicated permitting work associated with a project of this magnitude.

5. As the anticipated date of the Gaming Commission's license award changes, City officials must spend significant time adjusting schedules and timelines accordingly. These efforts divert City officials from performing other important work.

6. The City's current permitting work and bid documents for contractual services assume a license award in early September of 2014.

7. If the license award is delayed to a date after the November 4, 2014 state election, the City will need to divert time and resources in order to overhaul permitting timelines and procurement processes associated with the Mohegan Sun project. In addition, a delay would require City staff to duplicate prior work in order to ensure that Mohegan Sun's submissions are still current, and otherwise get back up to speed on a complex project.

8. If Mohegan Sun receives a gaming license, the City anticipates a wave of ancillary economic development projects on underutilized properties located near the Mohegan Sun site and Revere Beach.

9. The prolonged licensing process has made it difficult for me to market the City to potential developers, as many developers considering ancillary projects have been reluctant to wait until a license is finally awarded.

10. A further delay in the Gaming Commission's licensing process will worsen the City's marketability. I expect that some investors will decide against waiting an unknown number of months for the license award and consider development opportunities in another city.

Executed under the pains and penalties of perjury this 1st day of July, 2014.

John Festa

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

On July 1, 2014, before me, the undersigned notary public, personally appeared John Festa (the "Principal"), and acknowledged to me that the Principal signed the preceding or attached document voluntarily for its stated purpose and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief. The Principal proved to me through satisfactory evidence of identification that the Principal is the person whose name is signed on the preceding or attached document. The satisfactory evidence of identification provided to me was:

☐ A current document issued by a federal or state government agency bearing the photographic image of the Principal's face and signature; or

☐ On the oath or affirmation of a credible witness unaffected by the document or transaction who is personally known to the notary public and who personally knows the Principal; or

☒ Identification of the Principal based on the notary public's personal knowledge of the identity of the Principal; or

☐ The following evidence of identification: _____

_____

Notary Public: Cheryl A. McCormick

Printed Name: Cheryl A. McCormick

My Commission Expires: 5/25/18

CHERYL A. MCCORMICK
MY COMMISSION EXPIRES
05-25-2018
COMMONWEALTH OF MASSACHUSETTS
NOTARY PUBLIC

[Seal]

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July 1, 2014

**Jonathan M. Silverstein**
jsilverstein@k-plaw.com

BY ELECTRONIC MAIL

Massachusetts Gaming Commission
84 State Street, 10th Floor
Boston, MA 02109

Re: Region A Decision – Request for Public Comments
City of Everett Opposition to City of Boston's Motion to Stay

Dear Members of the Commission:

This office serves as Gaming Counsel to the City of Everett ("Everett"). Please accept this letter as Everett's Opposition to the recently filed Motion of the City of Boston to Stay Proceedings Involving Category 1 License Applications in Region A ("Motion") and in response to the Commission's request for public comment thereon. As set forth in greater detail below, Everett submits that the Motion should be denied as inconsistent with the Commission's mandate and regulations and for lack of any reasonable basis in law or fact.

1. Neither G.L. c.23K ("Act") nor the Commission's Regulations contemplate or authorize a Motion to Stay Proceedings

As a threshold matter, Everett submits that Boston's Motion – just the latest in a series of last-minute ploys to delay and undermine fulfillment of the Commission's mandate – is simply not procedurally appropriate.

The Commission has designated Boston a Surrounding Community, pursuant to G.L. c.23K, §17, and that designation provides Boston with its only formal status in connection with the Region A licensing process. Boston appears to misperceive the Commission's licensing process, apparently believing it to be an adjudicatory process to which it is a party.[1] However, the Commission has

[1] In Paragraph 8 of its Motion, Boston cites several cases, all of which discuss the standard for a motion to stay a judgment or order of the trial court (by definition an adjudicatory proceeding) pending appeal. Such a stay in litigation proceedings is explicitly authorized by both the Massachusetts and Federal Rules of Civil Procedure.

Similarly, the two court decisions from California cited in paragraph 14 of Boston's Motion are also inapposite. In Assembly of State of Cal. v. Deukmejian, 30 Cal. 3d 638 (Cal. Sup. Ct. 1982), the question addressed was whether a district reapportionment deemed unconstitutional should take effect pending a final outcome of litigation. In Lindelli v. Town of San Anselmo, 111 Cal. App. 4th 1099 (Cal. App. Ct. 2003), the California Court of Appeal was simply applying a statute that prohibited a local ordinance from taking effect if it is the subject of a referendum petition. Here, there is no such legislative requirement that the Act, which has now been in effect for over two years, should be stayed.

made clear through its regulations that the phase 2 licensing process is **not** an adjudicatory process but, rather, an administrative/legislative one. 205 CMR 118.07(1) ("The commission's RFA-2 administrative proceedings…are administrative and legislative in nature, not adjudicatory."). Nowhere in the Act or the Commission's regulations is **any** entity, let alone a Surrounding Community, granted the ability to seek a "stay of proceedings" that would essentially grind the Commission's primary licensing process to a halt.

Indeed, the rights of a Surrounding Community such as Boston to participate in the licensing process are clearly and narrowly prescribed. The Act provides Surrounding Communities with the right to receive notice of the Commission's public hearing (G.L. c.23K, §17(c)) and to submit comments regarding its support to the Commission (G.L. c.23K, §18(19)). The Commission's regulations provide Surrounding Communities with the additional right of making presentations at the public hearing. 205 CMR 118.05(2). However, there is simply no provision of either the Act or the Regulations that provides Surrounding Communities the ability to engage in motion practice or demand that the Commission suspend its core licensing function.

Therefore, Everett respectfully requests that the Commission summarily deny Boston's so-called Motion as not authorized or appropriate under either the Act or the Commission's Regulations.

2. Even under the standard articulated in Boston's Motion, a stay of proceedings would not be warranted

As noted above, Boston's Motion should be rejected as procedurally defective and not authorized under the Commission's Regulations or the Act itself and due to Boston's lack of standing to seek such a stay. In any case, even under the standard argued in the Motion (i.e. the standard set forth in the Rules of Civil Procedure for requests to stay court orders pending appeals), the stay requested by Boston would be unwarranted.[2]

a. Irreparable Harm/Balance of Harm

Boston's complaint, in paragraph 11 of its Motion, that it will have to devote considerable costs "to negotiate and/or arbitrate agreements with the applicants" does not comprise "irreparable harm" as that term has long been construed in the context of litigation. E.g, Floxboro Co. v. Arabian American Oil Co., 805 F.2d 34, 36-37 (1st Cir. 1986) (no irreparable injury exists where "only

[2] Everett submits that the more appropriate standard to employ would be the standard established by the Commission itself for granting waivers or variances from its regulations, since Boston is in essence requesting that the Commission vary from its own licensing schedule. This standard requires the party seeking a waiver to demonstrate, inter alia, that the request: (1) is consistent with the purposes of Chapter 23K; (2) will not interfere with the ability of the Commission to fulfill its duties. 205 CMR 102.03(4). It is unsurprising that Boston did not address these standards in its Motion, since the very nature of the relief sought in the Motion would interfere with the Commission's ability to perform its duties and would be diametrically contrary to the purposes of the Act.

money is at stake."); Tri-Nel Mgmt., Inc. v. Board of Health of Barnstable, 433 Mass. 217, 227-28 (2001) (quoting Hull Municipal Lighting Plant v. Mass. Mun. Wholesale Elec. Co., 399 Mass. 640, 643 (1987)).

Moreover, Boston will be entitled to recover from the applicants its reasonable consultant costs in negotiating Surrounding Community Agreements. If Boston proceeds to arbitration and is successful, it can (and presumably would) include a provision in its Best and Final Offer that requires such consultant fee payments, as did the two successful Surrounding Communities to the MGM project in Springfield (Longmeadow and West Springfield). Therefore, Boston should not suffer (financially or otherwise) if it is properly required to participate in the same process that **every other Surrounding Community to both proposals has already completed**.

b. Balance of Harm

In contrast to the lack of any cognizable harm to Boston if its Motion is denied, the Commonwealth, the City of Everett and thousands of individuals and businesses, who stand to benefit from the Wynn Everett project, will be severely prejudiced if Boston's latest dilatory tactic is successful.

Boston argues, without any elaboration, that a stay "of merely four months…will not prejudice any of the parties." This is simply incorrect. First, the stay would result in **an additional** four months of delay, which would compound the months of delay already resulting from Boston's previous last-minute attempts to obstruct the process through meritless claims of Host Community status. Four months of delay in commencement of operations of the Wynn project translates into (among many other detrimental costs):

- Permanent loss of **tens of millions of dollars** in gaming tax payments to the Commonwealth
- Permanent loss of **over $8 Million** in Host Community Payments to Everett (based upon annual payments of $25 Million, as set forth in the Host Community Agreement)
- Permanent loss over **$16.5 Million** in revenue to local businesses (based upon projections of $50 Million in goods and services to be purchased annually by Wynn Everett)
- Delayed employment of thousands of construction and permanent workers (and the resultant loss of income tax payments to the state)
- Delayed cleanup of a highly-contaminated project site
- Delayed construction of much needed public infrastructure improvements

Clearly, any inconvenience claimed by Boston in being required to follow the same process that every other Surrounding Community in the Commonwealth has followed pales in comparison to the hundreds of millions of dollars of lost taxes, host and surrounding community payments, payroll

and business revenue that four additional months of delay would cost the Commonwealth and its communities, businesses and residents.

c. Public Interest/Equity

As set forth above, the sheer scale of lost opportunity that would result from an additional four months of delay clearly would not be in the public interest. Moreover, the voters of Everett, having overwhelmingly voted (over a year ago) to support the Wynn Everett project, are entitled to have the Commission proceed with its review of that project.

In paragraph 12 of its Motion, Boston states (without any supporting rationale or citation) "a stay is in the public interest because any action the City takes with respect to the ongoing negotiation and arbitration process may unfairly impact voters." It is not at all apparent how Boston's participation in the surrounding community process would "unfairly impact voters." What is clear is that voters would have a much clearer sense of what they are voting on if the Commission completes its licensing process in Region A.

Finally, Everett submits that principles of fundamental fairness dictate denial of Boston's motion. This is not the first time that Boston has sought to delay the licensing process in Region A. Its repeated claims of Host Community status to the Wynn Everett project have resulted in delays. Its failure to timely participate in the process for negotiating/arbitrating surrounding community agreements will result in additional delays.

The potential that a repeal question would be on the ballot in November has been known for many months; this is not a new or unanticipated development. The ballot measure may or may not pass. If it does pass, the Legislature may or may not fully implement the measure or alternatively undertake a legislative fix that would leave much of the Act in place. If the repeal question does not pass, it may still be reasserted at some point in the future. None of these possibilities is new, and none warrants Boston's suggestion that the Commission essentially cease its operations to await the outcome.

As the Supreme Judicial Court reasoned in Abdow v. Attorney General, 468 Mass. 478 (2014), "the possibility of abolition is one of the many foreseeable risks that casinos, slots parlors, and their investors take when they choose to apply for a license." See Exhibit 1 to Boston's Motion, p.9, *7. Just as the various applicants for gaming licenses have not let this risk deter them from investing millions of dollars to pursue licenses in Massachusetts, the Commission should not let Boston's eleventh-hour invocation of this risk paralyze the Commission's operations.

Thank you for your consideration. Please do not hesitate to contact me if I or Everett can provide any further information regarding this matter.

Very truly yours,

Jonathan M. Silverstein

JMS/jam
cc: Hon. Carlo DeMaria, Jr.

501235/09307/0001

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July 1, 2014

*BY ELECTRONIC MAIL*

Commissioner James McHugh
Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, MA 02109
*mgccomments@state.ma.us*

**Re: Comments of Mohegan Sun Massachusetts, LLC Concerning the City of Boston's Request for a Stay of Region A Licensing Proceedings.**

Dear Commissioner McHugh:

Per the request for comments in the Commission's June 27, 2013 Notice of Meeting and Agenda, gaming license applicant Mohegan Sun Massachusetts, LLC ("MSM") submits these comments in opposition to the City of Boston's (the "City's") request that the Commission order an immediate suspension of all proceedings regarding the issuance of a Category 1 license in Region A, pending the outcome of the November referendum (the "Motion").

The Motion asks the Commission to behave now as if the initiative petition concerning Chapter 23K (the "Initiative Petition") has already been approved by the voters, at least with respect to the casino license in region A, the region widely projected to drive the most gaming revenue, the most tax revenue, and the most collateral economic development benefits for the Commonwealth overall. For the numerous reasons set forth below, the Commission should deny the request and move forward with its established licensing schedule. In summary:

- Suspending the operation of a validly enacted statute and duly authorized regulations pending a vote on the Initiative Petition is contrary to the balanced approach of Article 48 of the state Constitution, which governs the petition.

- In substance, the Motion requests a variance from the Commission's licensing schedule, especially as to completion of surrounding community agreements, but the City cannot satisfy the requirements for a variance. Most significantly,

    - A stay is contrary to the purposes of Chapter 23K and prevents the Commission from carrying out its statutory duties.

- The public interest is advanced, not harmed, by identifying the region A licensee prior to the November election.

- There is no basis to conclude that the Initiative Petition will pass in November.

- The harm to the public, host communities, and applicants outweighs the costs to Boston of completing the surrounding community agreement process.

I. The City's Motion is Contrary to Article 48 of the Massachusetts Constitution.

There is no basis in Article 48 of the Massachusetts Constitution for the City's request that the Commission abandon its statutory mandate to implement the Gaming Act. The question that the Supreme Judicial Court ordered to be placed on the November ballot is an Initiative Petition under Article 48 of the amendments to the Massachusetts Constitution. Whatever change is contemplated by an initiative petition, Article 48 does not contemplate suspension of existing law or anticipatory enforcement of the proposed statute prior to the election.

Under the state Constitution, an initiative petition, which proposes a new law, is different from a referendum. Article 48, which governs both forms of popular legislative action, distinguishes between them as follows:

> Legislative power shall continue to be vested in the general court; but the people reserve to themselves the popular initiative, which is the power of a specified number of voters to submit constitutional amendments and laws to the people for approval or rejection; and the popular referendum, which is the power of a specified number of voters to submit laws, enacted by the general court, to the people for their ratification or rejection.

Mass. Const., amend. art. 48 ("Article 48"), Pt. I, Def.

A popular referendum follows quickly on the heels of enactment. The petition must be submitted within 90 days of enactment, see Art. 48, Ref., Pt. III, § 3, which is before the law takes effect, see Art. 48, Ref., Pt. I. Article 48 provides a carefully circumscribed procedure for suspension of a duly enacted law pending the outcome of a *referendum*. Art. 48, Ref., Pt. III, § 3. Among other things, suspension of the law is possible only where the petition triggering the referendum calls for it and where the statute under review was *not* adopted as an emergency act. Id.; id. Pt. II, "Emergency Measures"; Molesworth v. Secretary of the Commonwealth, 347 Mass. 47, 48 (1964); Opinion of the Justices, 286 Mass. 611, 623-26 (1934). Such a suspended law "has never become an effective statute. It is an inchoate and uncompleted statute, still in its incipient stage." Id. at 626. The Gaming Act, on the other hand, was enacted with an

emergency preamble and became effective the day it was signed by the Governor, November 22, 2011. It was not, and could not have been, subject to suspension if there had been a valid referendum petition.

In sum, if the Commission were to effectively suspend Chapter 23K and give the Initiative Petition anticipatory effect, it would be acting contrary to the careful balance of Article 48, which allows for the possibility of suspension in the case of a referendum, but does not so provide for an initiative petition.[1]

II. The Request For A "Stay" Sidesteps The Commission's Variance Regulations, Which The Motion Cannot Satisfy.

The Motion is based on the wrong legal standard. It invokes the criteria used by Massachusetts appellate courts under Mass. Rule of Civil Procedure 62(c) to determine whether to grant an injunction pending appeal of a court judgment. See Motion ¶ 8 (citing Realty Central LLC v. RE/MAX of New England, Inc., 2005 WL 235932 (Mass. App. Ct. Feb. 1, 2005) (Rule 1:28 unpublished disposition) (copy attached at Tab 1)). While guised as a request for a stay of all proceedings related to the region A, category 1 gaming license pending an "appeal" of the Gaming Act to the electorate, the Motion is most particularly directed at delaying the schedule established by the Commission's regulations for surrounding community negotiations and arbitration. See, e.g., Motion ¶¶ 10-12 (arguing for stay due to potential effects of negotiating and arbitrating with applicants). Such a request must meet the Commission's requirements for a variance of the regulations, which the Motion cannot do.

The variance from the surrounding community arbitration schedule necessary to accommodate the City's requested stay is warranted only if each of the following criteria are satisfied:

1. Granting the stay is consistent with the purposes of Chapter 23K;

[1] The California referendum cases cited in the City's Motion are inapplicable to the question before the Commission. See Motion ¶ 14 (citing Assembly of State of Cal. v. Deukmejian, 30 Cal. 3d 638 (1982); Lindelli v. Town of San Anselmo, 111 Cal. App. 4th 1099 (2003)). Putting aside that they address California rather than Massachusetts law, the cases – which involve referenda, not initiatives – do not support the City's request. In each case, the law controlling the referendum process expressly required that the law under review be suspended pending the outcome of the vote. See Deukmejian, 30 Cal. 3d at 654-57 (finding that the California Constitution required suspension of the statute pending the referendum); Lindelli, 111 Cal. App. 4th at 1108-09 (noting that the statute governing a referendum on a municipal ordinance required suspension of the ordinance pending the vote). Contrary to the Motion's representation, the California court did not balance equities, competing harms, or the public interest to "consider[] the merits of granting stays in the face of upcoming citizens' referenda." Motion ¶ 14.

2. Granting the stay will not interfere with the ability of the Commission to fulfill its duties;

3. Granting the stay will not adversely affect the public interest; and

4. Not granting the stay would cause a substantial hardship to the City.

See 205 CMR 102.03(4)(a). The relief requested by the Motion is in direct conflict with both of the first two criteria, which are not part of the judicial stay analysis urged by the City.[2] The City's request also does not satisfy the third and fourth variance criteria, which are similar to factors argued by the City.

A. The Stay Is Antithetical to the Purposes of Chapter 23K

The purposes of Chapter 23K are to introduce expanded gaming into the Commonwealth through the award of up to four gaming licenses so as to provide quality jobs for Massachusetts residents and needed revenues to the Commonwealth for a wide variety of purposes. See generally M.G.L. c. 23K, § 1. Since its formation, the Commission has moved as quickly as prudence allows to implement the Gaming Act and bring those benefits to the people of Massachusetts. Calling a four month halt to the licensing process for a reason not required for deliberate implementation of the Act is antithetical to the purposes of the statute.

B. The Stay Would Necessarily Interfere With the Commission's Ability to Fulfill Its Duties.

1. The Commission's Duty Is To Implement Chapter 23K, A Valid Law

It follows from the direct conflict between a stay and the purposes of Chapter 23K that a stay of the licensing process in region A interferes with the Commission's ability to fulfill its duties. The Commission exists to implement, administer, and enforce Chapter 23K. See, e.g., M.G.L. c. 23K, §§ 1(10), 3, 4. The Commission is directed to "issue a request for applications." Id. § 8(a). If an applicant is suitable, the Commission must "evaluate and issue a statement of findings" as to its application, id. § 18, and must "take action on the application," id. § 17(e). With respect to surrounding communities, the Commission is required to establish "procedures for ensuring the conclusion of a negotiation of a fair and reasonable agreement between an applicant and a surrounding community." Id. at § 17(a). To meet that mandate, the Commission has adopted its surrounding community arbitration regulations, 205 CMR 125.01(6)(c). A stay

[2] The inarguable inability to meet the first two variance criteria likely explains why the City chose to seek an overall stay of licensing activities rather than an extension of the arbitration schedule.

of all proceedings related to the issuance of the region A category 1 license self-evidently interferes with the Commission's statutory duties.

2. Unnecessary Delay Could Lead to Staleness of the Applications and Thereby Interfere with the Commission's Ability to Select the Best Project.

Putting off further licensing activities until after the November election also interferes with the Commission's duties because it risks the Commission making decisions based on stale applications that will have been pending for over a year by the time the licensee is selected.

When the category 1 license applications were filed on December 31, 2013, the Commission anticipated making licensing determinations by May 31, 2014, pursuant to a tight schedule that would ensure gaming license fees were paid during the Commonwealth's 2013-2014 fiscal year. Since then, the anticipated date for selection of the region A licensee has moved to June 30 (due to the need to replace a Commission contractor) and then to mid-August and ultimately to late August / early September (due to proceedings related to the City's status as a host or surrounding community and to requests for extensions by the City). The City now asks that the licensing process, which has 2 to 2 1/2 months remaining, be frozen and resumed after the November election. On that time table, the Commission's final evaluation and decision on the December 2013 applications will come no sooner than January 2015. So much time will have passed by then that the Commission would have to question the continuing reliability of much of the content of the applications, including the projections and market analyses based on conditions as they existed in 2013.

C. The Public Interest Would Be Harmed By A Stay

The City provides no basis for its public-interest argument, which is nothing more than a naked assertion that, in the absence of a stay, "any action they City takes with respect to the ongoing negotiation and arbitration process may unfairly impact voters." Motion ¶ 12. To the contrary, a stay is against the public interest, which will be promoted by following the Commission's current schedule for designating the region 1 licensee in late August or early September.

The legislature has determined that the public interest lies in the jobs, tax revenues, and other benefits provided for by Chapter 23K. Assuming the Commission finds at least one of the region A applicants worthy of receiving a license, the current schedule is the most expeditious way to implement the statute.

The Commission is well aware of the importance to the state budget of the timely award of gaming licenses. This was reinforced this past weekend, as Massachusetts legislative leaders reached agreement on a budget for fiscal year 2015 that counts on millions of dollars in casino licensing fees. See Matt Murphy, "Budget Accord Relies on Casino $$$, includes Wine Shipment Bill," State House News Service, June 29, 2014 (attached at Tab 2). It remains unknown what other proceedings or delays might arise as the remainder of the region A process unfolds. An unwarranted stay that puts off such unfolding until November introduces the risk that the region A license fee may not even be collected in fiscal year 2015.

If it is appropriate for the Commission to consider the interests of the electorate faced with the ballot question on the Initiative Petition, it is difficult to see how the City reaches its conclusion that proceeding to identify the region A recipient of the category 1 license, or any interim step in the process of the making that determination, could be "unfair to the voters." To the contrary, determining the applicant and the project that will receive a license if Chapter 23K survives the election provides voters with important information they can factor in to their assessment of the statute.

To borrow a legislative metaphor, since enactment of the Gaming Act and the formation of the Commission, Massachusetts voters have seen the sausage making of the licensee-selection process. This is all the more so because of the public nature of the Commission's deliberations under the Open Meeting Law. Many issues have arisen in public discourse, in particular through the media, about aspects of the process — the accuracy of revenue projections, the sufficiency of proposed mitigation measures, the suitability of applicants, the identity of land owners and others associated with the process. The voters may have in mind the questions, but they do not yet know the Commission's answers. To enable them to make a fair assessment of the statute, they should have the benefit of the Commission's judgments on issues that may concern them.

D. Not Granting The Stay Will Not Cause Substantial Hardship To The City.

While completing the negotiation and/or arbitration of surrounding community agreements will require the City to expend some effort in the weeks to come, the costs are not so significant that they will cause "substantial hardship" to the City, as is required to meet the criteria for a variance. The City's repeated claim that it will incur considerable out-of-pocket expenses, including legal fees, in connection with finishing the agreements is a red herring, at least with respect to Mohegan Sun Massachusetts. Whether the surrounding community agreement is negotiated or the result of arbitration, based on precedent it will provide for reimbursement of the City's reasonable costs incurred in negotiating the Agreement. If there are uncovered costs, the City may seek reimbursement through the Commission's host and surrounding community grant and reimbursement programs. See, e.g., 205 CMR 114.03; M.G.L. c. 23K, § 4(7).

Beyond out-of-pocket expenses, the City notes that completing the agreements will require some time to be spent by City Hall. This is no doubt true, but it does not amount an undue burden or substantial hardship that warrants a stay. Over the past year or more, many communities have expended significant amounts of time in connection with host or surrounding community issues that, in the end, have turned out to be fruitless when, for example, a host community election failed or an applicant was not selected. These efforts include assessing the impacts of proposed gaming establishments, negotiating host community agreements, holding host community elections, filing petitions for surrounding community status, and negotiating surrounding community agreements. The effort required to comply with the statute and the duly adopted implementing regulations is not a sufficient basis for a stay.

III. A Stay Is Not Warranted Even Under The City's Incorrect Legal Standard.

As noted, the City eschews the Commission's variance regulations and argues for a stay based on the criteria used to adjudicate a litigant's request for an injunction pending appeal under Mass. Rule of Civil Procedure 62(c). Motion ¶ 8 (citing Realty Central LLC, 2005 WL 235932 at *4 (attached at Tab 1)). Even if the City's proffered standard were correct, a stay would not be warranted.

The criteria urged by the City are: (1) the likelihood of success of the challenge; (2) whether a party will suffer irreparable harm if a stay is not granted; (3) the balance of harms between the parties if a stay is granted, and (4) whether the public interest would be furthered by granting a stay. Motion ¶ 8. The City does not satisfy any of them. The public interest is addressed above; the remaining factors are discussed below.

A. The City Has Not Demonstrated That The Initiative Petition Will Pass.

There is no basis for City's conclusion that it is "likely that expanded gaming will be repealed," Motion ¶ 13, and there certainly is not a record establishing the substantial likelihood of passage of the Initiative Petition that is necessary to warrant a stay of licensing proceedings. The City cites a lone June 20 Boston Globe article for its conclusion, but fails to note that the Globe poll referred to in the article found an 11-point majority (52% to 41%) in favor of retaining Chapter 23K. See David Scharfenberg, "Poll Shows Mass. Voters Still Support Casinos," The Boston Globe, June 19, 2014 (attached at Tab 3). Two days before, the State House News Service reported on a poll of voters in eastern Massachusetts that found 58% would vote to retain the law while only 38% would vote to repeal it. See "In Poll, Area Voters Give Edge to Revere Casino," State House News Service, June 18, 2014 (attached at Tab 4).

B. The City Has Not Demonstrated Irreparable Harm.

If the judicial injunction criteria were applicable, the City would have to demonstrate that it would be *irreparably* harmed by the continued implementation of the Gaming Act in region A. It cannot. Even if the applicants (at least Mohegan Sun Massachusetts) were not going to reimburse the City's costs of negotiating the surrounding community agreements, monetary loss is not irreparable harm. Nor are the non-monetary aspects of completing a regulatory process. The United States Supreme Court spoke to the issue in F.T.C. v. Standard Oil Co. of California, 449 U.S. 232 (1980), in which the company sought to avoid the litigation involved in an administrative adjudicatory process by appealing to court before it was concluded. The Court stated:

> Socal also contends that it will be irreparably harmed unless the issuance of the complaint is judicially reviewed immediately. Socal argues that the expense and disruption of defending itself in protracted adjudicatory proceedings constitutes irreparable harm. As indicated above, we do not doubt that the burden of defending this proceeding will be substantial. But "the expense and annoyance of litigation is 'part of the social burden of living under government.'" Petroleum Exploration, Inc. v. Public Service Comm'n, 304 U.S. 209, 222 (1938). As we recently reiterated: "Mere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury." Renegotiation Board v. Bannercraft Clothing Co., 415 U.S. 1, 24 (1974)."

Id. at 244.

There is no reason to believe the City will have substantial costs and disruptions in the nature of the litigation costs contemplated in Standard Oil Co. The City has been negotiating with the applicants for months, and it reported to the Commission on May 1 that it was close to concluding agreements with each applicant. Even if the City were to go to arbitration with both applicants, the Commission's regulations provide for a quick resolution of the matter, within 30 days of the commencement of proceedings. None of the harms claimed by the City count as irreparable harm under the judicial stay criteria.

C. The City Ignores the Prejudice to the Applicants, the Host Communities, and the Commonwealth.

The City is wrong when it asserts that the "delay of merely four months" that would result from its stay "will not prejudice any of the parties." Motion ¶ 11.

Applicants would be harmed in several ways by the delay. Dragging out the application process for months past its already-extended time frame would cause the applicants to continue

to incur the same types of out-of-pocket and time-and-energy expenses about which the City complains. Also, the additional delay would put the opening of the region A casino even further behind the openings of the category 2 slots parlor and the region B casino. Each day of delay would harm the region A casino's competitive position.

Host Communities would be harmed as well. Delaying the license award until at least January 2015 would have adverse impacts on the finances of the City of Revere, the host community for MSM's proposed gaming establishment, as set forth in the separate brief of the City of Revere being filed today.

And, for the reasons discussed above, the stay would also harm, not promote, the public interest.

In sum, the stay requested by the City would have real consequences for other parties invested in the gaming license process and decision. The balance of harms is against issuance of the stay, not in favor of it.

## Conclusion

For the reasons stated above, the Commission should not order an immediate suspension of all proceedings regarding the issuance of a Category 1 license in Region A, pending the outcome of the November referendum. The City's request for a stay should be denied.

Sincerely,

Bruce S. Barnett

cc: Catherine Blue, General Counsel
John Ziemba Ombudsman
David Rome, Esq.
Kevin C. Conroy, Esq.

# Tab 1

H

NOTICE: THIS IS AN UNPUBLISHED OPINION.

Appeals Court of Massachusetts.
REALTY CENTRAL LLC & others,[FN1]

FN1. Karmichael Realty, Inc., and Michael Venditto.

v.
RE/MAX OF NEW ENGLAND, INC.

No. 03-P-1473.
Feb. 1, 2005.

*MEMORANDUM AND ORDER PURSUANT TO RULE 1:28*

***1** In 1999, and again in 2002, Realty Central LLC, Karmichael Realty, Inc., and Michael Venditto (plaintiffs) entered into negotiations with the defendant, Re/Max of New England, Inc., (Re/Max) to obtain a real estate franchise to operate in Revere. After negotiations broke down in 2002, the plaintiffs filed a complaint in the Superior Court alleging, namely, breach of an oral contract, breach of a written contract, promissory estoppel, intentional misrepresentation, negligent misrepresentation, violations of G.L. c. 93A, and breach of the implied covenant of good faith and fair dealing. The defendant filed a motion for summary judgment as to all seven counts. Following oral argument, a Superior Court judge granted the defendant's motion. The plaintiffs appeal from that judgment[FN2] as well as from the denial of their motion for a stay pending their appeal.

FN2. The plaintiffs claim that the judge lacked authority to consider the defendant's summary judgment motion because two Superior Court judges had ordered the case to trial. "A judge should be reluctant to undo the work of another judge, but until final judgment there is no lack of power to do so." *Serody v. Serody*, 19 Mass.App.Ct. 411, 412 (1985).

1. *Facts.* We review the evidence in the light most favorable to the nonmoving party, here the plaintiffs. *Miller v. Mooney*, 431 Mass. 57, 60 (2000).

In 1999, the plaintiffs contacted Jay Hummer, the defendant's vice president, about the possibility of obtaining a franchise to sell real estate in Revere. In return, the defendant provided the plaintiffs with an "offering circular" which included a model franchise agreement. That agreement stated that before a franchise agreement could be effective, it had to be signed by the defendant's regional director. No agreement was reached at that time.

In February, 2002, discussions between the parties resumed. The plaintiffs, during the course of those discussions, told Hummer that they wanted to secure an exclusivity provision, which would preclude another RE/MAX franchise from operating in the Revere territory. Initially, Hummer stated he did not think that exclusivity would be a problem. In anticipation of opening a Re/Max franchise, the plaintiffs created a company, Realty Central LLC, to serve as the RE/MAX franchisee and started recruiting sales associates and ordering supplies. The plaintiffs incurred legal fees in creating the franchise company and released two tenants from leases in their building to make space available for the franchise.

During the course of the 2002 discussions, the defendant forwarded several documents, including the 2002 offering circular, a confidential worksheet, a draft franchise agreement with the franchise name and location proposed by the plaintiffs, and the sales associate quotas that would be enforced by the defendant. Section 17 of the franchise agreement, which immediately preceded the signature blocks, specifically stated, in capital letters the following: "THE SUBMISSION OF THIS AGREEMENT TO

YOU DOES NOT CONSTITUTE AN OFFER AND THIS AGREEMENT SHALL BECOME EFFECTIVE ONLY UPON ITS EXECUTION BY YOU AND BY US. THIS AGREEMENT SHALL NOT BE BINDING ON U.S. UNLESS AND UNTIL IT IS ACCEPTED BY US, THAT IS, SIGNED BY OUR AUTHORIZED OFFICER AND RETURNED TO YOU." An addendum relating to the exclusivity of the franchise was attached to the draft agreement. That addendum stated the following: "RE/MAX agrees that during the Term of the Franchise Agreement, RE/MAX will not enter any additional RE/MAX residential franchise agreements within the city of Revere.... This letter shall be deemed part of the Franchise Agreement and is hereby incorporated into the Franchise Agreement...."

***2** On or about April 9, Hummer called the plaintiffs and informed them that RE/MAX could not grant them an exclusive franchise in Revere. Instead, Hummer offered to waive the franchise fee for an exclusive franchise in Everett in addition to the nonexclusive franchise in Revere. Notwithstanding this new information, on April 11, the plaintiffs executed and delivered to RE/MAX the previously received franchise exclusivity agreements, along with the required franchise fee. RE/MAX never executed the agreement as provided under section 17.

2. *Discussion.* "An order granting or denying summary judgment will be upheld if the trial judge ruled on undisputed material facts and his ruling was correct as a matter of law." *Route One Liquors, Inc. v. Secretary of Admn. & Fin.,* 439 Mass. 111, 115 (2003), quoting from *Commonwealth v. One 1987 Mercury Cougar Auto.,* 413 Mass. 534, 536 (1992). We agree with the Superior Court judge that the plaintiffs here have failed to demonstrate that there is a genuine issue for trial and affirm the grant of summary judgment.

a. *Breach of an oral contract.*[FN3] The plaintiffs argue that they reached an enforceable oral agreement with RE/MAX, that "the parties had agreed upon specific terms," that "the paperwork was just a formality," and that the "Franchise Agreement and Exclusivity Agreement ... memorialized the parties' agreement." As matter of law, the plaintiffs' claim must fail because the alleged oral agreement violated the Statute of Frauds, the terms of the agreement were not definite, and the parties clearly anticipated a written agreement.

FN3. On appeal, the plaintiffs do not challenge the allowance of the summary judgment motion on their breach of a written contract claim.

(i) *The franchise agreement must be in writing.* According to the written draft franchise agreement, which the plaintiffs received and reviewed on more than one occasion, the anticipated duration of the agreement was five years.[FN4] Initially, the plaintiffs did not dispute the express five-year provision contained in the agreement, but at the hearing on the summary judgment motion, they argued that the term was "forever." Now, on appeal, the plaintiffs argue that "at the very least, a genuine issue of material fact [exists] over the question of the duration of the contract."

FN4. The relevant language reads as follows: "The term of the Franchise will begin on the Agreement Date and continue for a period of 5 years (the 'Term'), unless the Franchise is terminated earlier pursuant to the provisions of this Agreement. Termination or expiration of this Agreement will constitute a termination or expiration of your franchise."

The Statute of Frauds, General Laws c. 259, § 1, fifth clause, provides that "[n]o action shall be brought ... [u]pon an agreement that is not to be performed within one year from the making thereof." "[T]he words 'an agreement that is not to be performed within one year' have been held to apply only to an agreement that necessarily must require more than a year for performance." ' *Marble v. Clinton,* 298 Mass. 87, 89 (1937), quoting from

*Rowland v. Hackel*, 243 Mass. 160, 162 (1922). See, e.g., *Joseph Martin, Inc. v. McNulty*, 300 Mass. 573, 575 (1938); *Meng v. Trustees of Boston Univ.*, 44 Mass.App.Ct. 650, 652 (1998).

The plaintiffs argue that if the "quotas for the first year were not met, then the contract would be performed within a year, and the statute of frauds would be inapplicable." FN5 The plaintiffs reason that because RE/MAX could terminate the contract, "[t]he contract could, therefore, be performed within one year." FN6

FN5. Section 7 of the franchise agreement described the number of sales associates (quota) the plaintiffs were required to have by a certain anniversary of the agreement date, starting at three associates and increasing to five by the fourth anniversary of the agreement.

FN6. Section 13.E(4) of the agreement states that failure to satisfy and maintain the quota established by section 7 would give RE/MAX the right to terminate the agreement, but also allowed the plaintiffs an opportunity to cure the default.

***3** The fact that RE/MAX could terminate the contract within one year does not mean that the contract was, in fact, performed, nor does it remove the agreement from the requirements of the Statute of Frauds. Where contemplated performance exceeds one year, but the contract may be terminated at the election of one of the parties within a year, the contract has generally been held to be within the statute. See *Doyle v. Dixon*, 97 Mass. 208, 212 (1867) (if agreement can not be fully performed within one year, fact that it may be terminated does not remove it from the statute); *Marble v. Clinton*, 298 Mass. at 89-90 ("If the contract should be terminated within the year, the result would not be an alternative form of performance, but excusable nonperformance"). "To be discharged from liability under a contract is not to perform it." *Union Car Advertising Co. v. Boston Elev. Ry.*, 26 F.2d 755, 760 (1st Cir.1928) ("The fact that the contract may be terminated ... does not take it out of the statute).

(ii) *The terms of the alleged oral agreement were not definite.* "There must be agreement on the essential terms of the transaction in order that the nature and extent of the parties' obligations can be determined and ... enforced." *Novel Iron Works, Inc. v. Wexler Const. Co.*, 26 Mass.App.Ct. 401, 408 (1988). The duration of the agreement is such an essential term. See *Held v. Zamparelli*, 13 Mass.App.Ct. 957, 958 (1982). Contrary to the express language of the agreement that the term of the franchise will be five years, the plaintiffs argue that the contract term is "forever." If, as the plaintiffs now argue, "a genuine issue of material fact [exists] over the question of the duration of the contract," then such a dispute would have necessarily prevented the formation of the oral contract they seek to enforce because the parties have not agreed on an essential term.

(iii) *The parties anticipated a written agreement.* RE/MAX did not intend to be bound absent an executed written agreement. Here, the plain language of section 17 of the agreement leaves no doubt that RE/MAX required a written, executed contract. "Where, as here, parties negotiate orally as to the terms of an agreement while intending to execute a written contract, the parties generally are not bound until the contract is signed." *Novel Iron Works, Inc. v.. Wexler Const. Co.*, 26 Mass.App.Ct. at 407-408. See e.g., *Rosenfield v. United States Trust Co.*, 290 Mass. 210, 216 (1935). Section 17, combined with the lack of agreement on essential terms, refutes the plaintiffs' argument that "the writing to be drafted and delivered is a mere memorial of the contract, which is already final by the earlier mutual assent of the parties." *Rosenfield v. U.S. Trust Co., supra.* There is no evidence that the parties assented to the terms of the purported oral agreement.

b. *The plaintiffs' remaining counts.* The plaintiffs now argue that the Superior Court judge erroneously applied the "same flawed reasoning" to

enter summary judgment for the defendant on the remaining counts of the complaint. For the reasons stated in the defendant's brief at pages 23 to 30, as well as those articulated by the Superior Court judge, we conclude that the defendant was entitled to summary judgment on those counts.

***4** c. *The Superior Court judge's denial of the plaintiffs' motion for a stay.* When they filed their complaint, the plaintiffs filed a motion for a temporary restraining order, or in the alternative, for an injunction, to enjoin the operation of a RE/MAX franchise in Revere. At that time, after a hearing and consideration of the pleadings, a Superior Court judge denied the motion, concluding that they "had not demonstrated a sufficient likelihood of success on the merits," notwithstanding the possibility of harm to the plaintiffs.

After judgment entered for the defendants, the plaintiffs moved pursuant to Mass.R.Civ.P. 62(c) and (d), 365 Mass. 829 (1974), for relief pending appeal to enjoin RE/MAX from operating another franchise in Revere. A party seeking a stay pending appeal must demonstrate (1) the likelihood of success on the merits of the appeal; (2) the likelihood of irreparable harm if the stay is denied; (3) the absence of substantial harm to the other party if the stay issues; and (4) the absence of harm to the public interest from granting the stay. Smith & Zobel, Rules Practice § 62.3 (1977). After a hearing, the motion was denied on November 10, 2003. "When reviewing the denial of a stay, a judge generally is limited to reviewing for errors of law or abuse of discretion." *Oznemoc, Inc. v. Alcoholic Bevs. Control Commn.*, 412 Mass. 100, 109 (1992). For the same reasons that the initial motion for an injunction or restraining order was denied, we discern no abuse of discretion in denying the plaintiffs' rule 62 motion after summary judgment entered for the defendants.

The grant of summary judgment is affirmed FN7 as is the denial of the plaintiffs' motion for relief pending appeal.

FN7. The plaintiffs claim that the judge failed to consider the evidence in the light most favorable to them. In their brief, they list evidence which they claim demonstrates that the plaintiffs had reached an enforceable oral agreement with RE/MAX and that the judge did not mention such evidence in her memorandum. We have reviewed the evidence cited in the plaintiff's brief and conclude that the evidence is not relevant to our conclusion.

*So ordered.*

Mass.App.Ct.,2005.
Realty Cent. LLC v. Re/Max of New England, Inc.
62 Mass.App.Ct. 1121, 821 N.E.2d 517, 2005 WL 235932 (Mass.App.Ct.)

END OF DOCUMENT

# Tab 2

STATE HOUSE NEWS SERVICE

**BUDGET ACCORD RELIES ON CASINO $$$, INCLUDES WINE** SHIPMENT BILL

By Matt Murphy
STATE HOUSE NEWS SERVICE

JUNE 29, 2014…. House and Senate leaders reached compromise Sunday on a $36.5 billion state budget for the fiscal year that starts Tuesday, but a Senate effort to expand the state's bottle redemption law and avoid a summer and fall ballot campaign did not make it into the final spending package.

The budget, which exceeds the estimated 4.9 percent revenue growth assumed when lawmakers built their original spending plans, also counts on $73 million in casino licensing fees and slot parlor revenues that could disappear in November if voters repeal the state's casino gambling law.

The agreement "strikes a careful balance between making vital investments in our Commonwealth and continuing our practice of fiscal responsibility, which has served us well through challenging financial times," said House Ways and Means Chairman Brian Dempsey, a Haverhill Democrat.

The House and Senate have plans to meet Monday to ratify the agreement (H 4242), but with Gov. Deval Patrick leaving in the afternoon for Panama the new fiscal year will start without a formal budget in place. The governor has 10 days to review the spending plan once it arrives on his desk. Lawmakers last week approved a $4.6 billion interim budget to keep government running through July.

The House also plans on Monday to take adopt a welfare reform bill and take up a compromise, also reached Sunday, on compounding pharmacy legislation and a Senate bill to make substance abuse treatment more readily accessible.

Dempsey, in an interview, said negotiators were able to afford the increase in the bottom line - which surpassed spending approved by the House and Senate - by banking on increased one-time tax settlements and additional Medicaid and Group Insurance Commission revenues from new communities joining the state-administered health insurance program.

The budget also counts on $35 million in revenue from a tax amnesty program that affords scofflaws a window next year to pay back taxes without facing penalties, of which $5 million would be dedicated to substance abuse treatment.

Senate Ways and Means Chairman Stephen Brewer said in a statement that the

budget "reduces the reliance on one time revenues, invests in new solutions to combat the issue of substance abuse, and delivers historically high levels of local aid to our cities and towns."

All six conference committee members, including Republicans Rep. Viriato deMacedo and Sen. Richard Ross, signed off on the deal. Rep. Stephen Kulik and Sen. Jennifer Flanagan were the other conferees.

On the policy front, the budget would for the first time allow for direct shipments of up to 12 cases of wine a year from out-of-state vineyards to Massachusetts wine drinkers.

After the House and Senate last week came together to pass legislation setting nurse staff ratios in intensive care units as part of an effort to head off a ballot question in November, the same type of agreement could not be reached to expand the bottle bill to include water and sports drinks.

The Senate slipped a bottle bill expansion into its version of the budget passed in May.

"I think we continue to have concerns about some of the issues relative to the bottle bill, in terms of the issue of it being really a fee. The speaker has expressed that as a concern so we just couldn't get there," said Dempsey, who noted that another consideration in leaving in out of the budget were the ongoing conversations of a special legislative task force exploring a deal on the issue.

Both the House and Senate had also counted $73 million in gaming revenues, including $53 million from casino licenses and $20 million in slot revenue. The Supreme Judicial Court last week gave the green light to a ballot question repealing casino gaming that could wipe those funds away.

"We're certainly aware of the events and will continue to monitor that. Should there be changes necessary we will revisit that collectively to address the issues depending on what happens," Dempsey said.

The budget accord, which is not subject to amendment, includes $18 million in new funds for substance abuse prevention education and treatment programs, including $10 million for a new trust fund that lawmakers said would provide services for 10,000 residents addicted to drugs.

House and Senate lawmakers also poured $15 million in new spending into early education to reduce wait lists for low-income families, and adopted many of policy recommendations made by the Child Welfare League of America to reform the embattled Department of Children and Families, including licensing for social workers.

The budget relies on $140 million in "rainy day" fund reserves, and boosts state contributions by $163 million to speed the process of covering the state's

unfunded pension liability by 2036.

Other spending highlights include a $25.5 million increase for municipalities in unrestricted local aid, full funding at $257.5 million for special education and $70.3 million for regional school transportation to provide a 90 percent reimbursement rate for cities and towns.

The budget also includes $65 million for rental vouchers to expand the program to new families and a $21 million increase for state universities and community colleges. While the University of Massachusetts has agreed to freeze tuition and fees based on its budget appropriation, leaders of other public campuses asked for more funding that they did not receive in order to also guarantee costs would not rise for their students.

Dempsey said the cost of college continues to be a concern, and said lawmakers will work with college leaders to reduce costs and improve efficiency.

"It's the second consecutive increase and it demonstrates our ongoing commitment to higher education," Dempsey said. "Certainly they were looking for more. We're pleased to hear UMass has committed to not increasing tuition and fees, but community colleges had different views. Certainly it's a concern but we have to find balance and continue to look at the expenses side of the equation as well."

A panel of lawmakers negotiating legislation since last year to further regulate compounding pharmacies also announced a breakthrough on Sunday. The issue leapt to the forefront of the policy agenda in 2013 after a deadly national outbreak of meningitis was traced to a pharmacy in Framingham, but talks to reach compromise between the branches stalled.

The deal (H 4235) calls for the Board of Registration in Pharmacy to establish four new specialty licenses for retail sterile compounding pharmacy, retail complex non-sterile compounding, and institutional pharmacy license to apply to hospitals and an out-of-state pharmacy license for those doing business in Massachusetts.

Inspectors would be required to conduct planned and unplanned inspections of all licensed compounding pharmacies in the state, and out-of-state pharmacies must participate in the state's Prescription Monitoring Program.

To honor Brewer, who plans to retire from the Legislature at the end of the year, senators during their budget debate voted to make the Barre history buff the official reenactor laureate of the Commonwealth. Dempsey said the gesture was not included in the final budget at the request of Brewer himself.

-END-
06/29/2014

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# Tab 3

The Boston Globe Politics


HEALTH & WELLNESS
Timing knee and hip replacements


MUSIC REVIEW
Lady Gaga brings usual spectacle but hollow performance


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WEEKLY POLL

# Poll shows Mass. voters still support casinos

**By David Scharfenberg** | GLOBE STAFF JUNE 19, 2014

MGM RESORTS INTERNATIONAL

**An artist rendering shows part of a proposed casino complex in Springfield.**

Massachusetts voters still support Las Vegas-style gaming in the state, even as they've soured on the commission charged with selecting casino operators, according to a new Boston Globe poll.

Fifty-two percent of respondents say they would vote to keep the state's casino law in place if the question lands on the ballot this fall, while just 41 percent would repeal it.

CONTINUE READING BELOW ▼

The support comes despite significant concerns about the Massachusetts Gaming Commission, which has overseen a topsy-turvy process for siting three casinos and a slot parlor.

Among voters paying close attention to the casino rollout, 52 percent say they don't have confidence in the panel, compared with 45 percent who do.

The poll also suggests the recent Democratic state convention, which narrowed the field of gubernatorial candidates from five to three, did little to shift the overall dynamic of the race.

Attorney General Martha Coakley maintains a large lead over Treasurer Steve Grossman, who won the party's official endorsement at the convention, and former Obama administration health care official Don Berwick.

**Related**

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- **Coverage: Casino gambling in Mass.**
  - **Graphic: Globe poll on governor's race**
- **Capital: The week in politics and issues**
- **Dashboard: Political polling and online influencers**
- **After initial fanfare, skepticism grows**
- **Gambling commissioner steps into the spotlight**

The initial post-convention polling "doesn't show any significant bounce for the Grossman or Berwick campaigns," said John Della Volpe, chief executive for SocialSphere Inc., which conducted the survey.

CONTINUE READING BELOW ▼

The casino process has been mired in controversy for months now. Several towns rejected casino proposals. And Gaming Commission chairman Stephen Crosby recused himself from the panel's biggest decision — selecting a Greater Boston casino operator — amid questions about his impartiality.

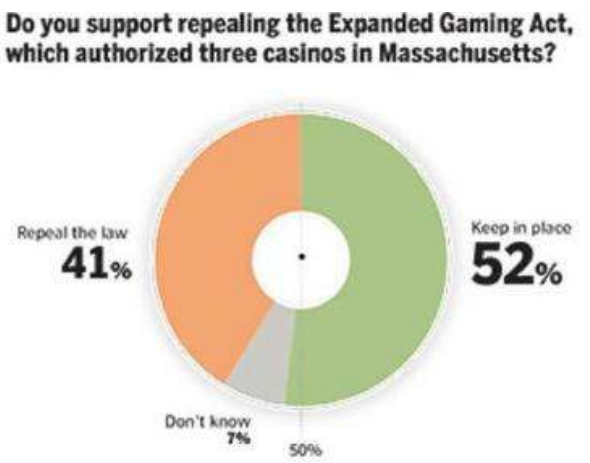
There's been a cameo by Russian mobsters and a starring role for a convicted felon with a four-page Massachusetts rap sheet.

Della Volpe, who also conducts polls for the state Lottery, said the broad swirl of controversy — much of it beyond the control of the commission — probably dragged down confidence in the panel. "I don't think it's fair to put 100 percent of that on government," he said. "It's a cauldron of conflict."

Poll respondent Joel Peterson, 70, a clinical social worker from West Roxbury, said he has a "mixed" view of the commission's performance. But, he added, "I don't see anything egregious at this point."

And his misgivings about the panel, Peterson said, haven't shaken his support for casinos. "To be completely mercenary about it, it would be a tax benefit for the state — and for its communities," he said.

Casino opponents want to get a repeal of the 2011 casino law on the November ballot. Coakley, the




attorney general, ruled the proposed ballot question unconstitutional last year. But advocates appealed to the Supreme Judicial Court, which is expected to issue a decision by early July.

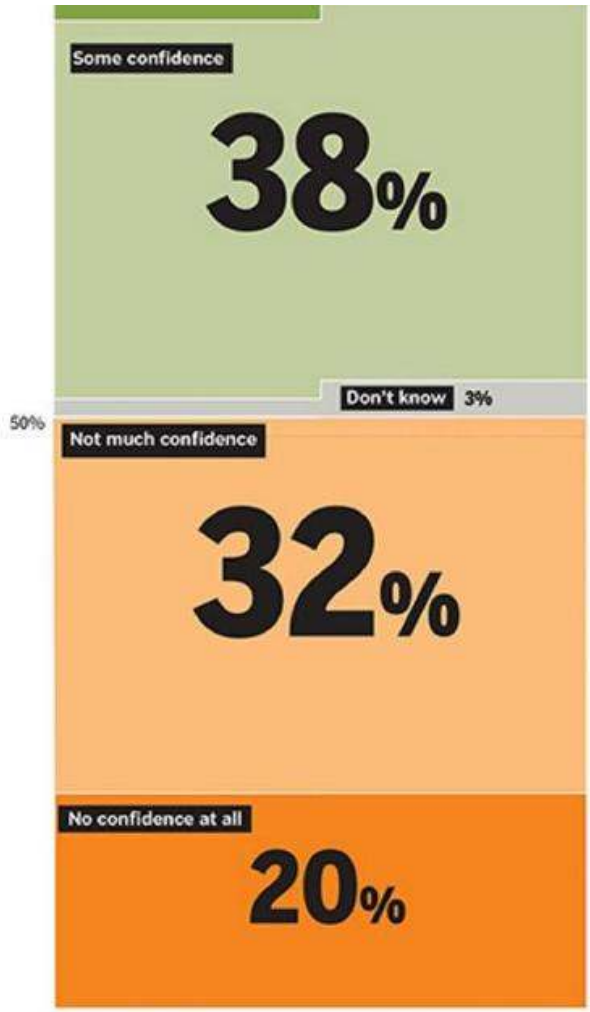
The Globe poll of 630 likely voters also delved into the Bay State's gambling habits.

Almost three in 10 said they placed a bet at a casino in the past two years — many of them, no doubt, at gambling halls in neighboring Rhode Island and Connecticut.

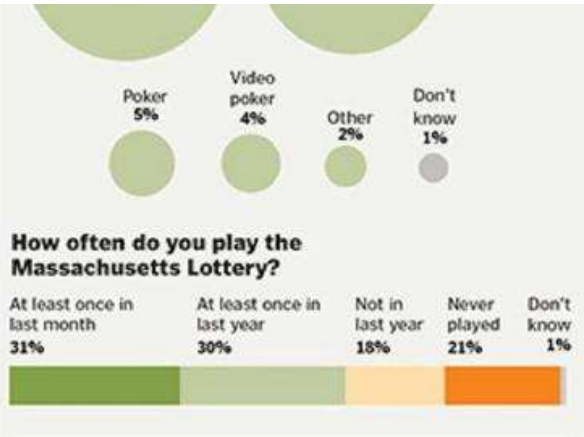
Those who cross state lines to gamble now may make more frequent visits to the roulette and craps tables when Massachusetts casinos open. But the poll suggests there will be no significant surge of new gamblers.

Thirty-three percent of poll respondents said they would be likely to visit a Massachusetts casino within one year of its opening — just a slight uptick from the 29 percent who placed a bet at a casino in the last two years.

"I don't think there is an overwhelming thirst for new gambling in Massachusetts," said Della Volpe, the pollster. "We're




talking about a cannibalization . . . of other properties" such as the Foxwoods and Mohegan Sun casinos in Connecticut and the Newport Grand slot parlor in Rhode Island.




The survey found that, of those who said they had placed a bet in a casino in the past two years, 48 percent prefer slot machines; 40 percent table games like blackjack, craps, or roulette; 5 percent poker; and 2 percent video poker.

The poll suggests a generational divide, with younger voters reared on fantasy sports and other analytical pursuits more likely to prefer table games and older voters favoring slot machines.

The survey also found that Massachusetts voters who frequent casinos come with thick wallets. The mean poll respondent said he was willing to spend up to $245 in a casino visit. Men, younger voters, and those making less than $50,000 per year were willing to wager the most.

The poll finding plays into arguments from gambling opponents who say casino gaming would amount to a tax on the poor.

Twenty percent of poll respondents said they would prefer a Boston-area casino at Suffolk Downs in Revere, while 7 percent support the Everett proposal from Wynn resorts. Thirty-nine percent said they don't have a preference, while 29 percent said they don't approve of gaming in the area.

The survey was conducted in two waves, from June 8 to 10 and June 15 to 17, and has a margin of error of 3.9 percentage points for most questions.

The question on the Democratic gubernatorial primary, asked of 198 likely Democratic primary voters, came during the second wave — a three-day period immediately following the party's state convention. The margin of error for that question is nearly 7 percentage points.

Fifty-two percent favored Coakley, 19 percent backed Grossman, and 8 percent supported Berwick.

The Boston Globe's rolling poll will add more likely Democratic primary voters to the pool this weekend — boosting the sample size and shrinking the margin of error.

*David Scharfenberg can be reached at david.scharfenberg@globe.com. Follow him on Twitter @dscharfGlobe.*

***Clarification:*** *This story failed to disclose that pollster John Della Volpe also conducts polls for the Massachusetts State Lottery.*

# Tab 4

STATE HOUSE NEWS SERVICE

# IN POLL, AREA VOTERS GIVE EDGE TO REVERE CASINO

By Gintautas Dumcius
STATE HOUSE NEWS SERVICE

STATE HOUSE, BOSTON, JUNE 18, 2014….Voters in eastern Massachusetts favor Mohegan Sun's proposal for a casino on the Revere side of Suffolk Downs over the Wynn Resorts' proposal on the Mystic River in Everett, according to a new poll.

The poll, obtained by the News Service, was commissioned by Mohegan Sun and shows 50 percent of voters preferring Mohegan Sun's proposal, compared to 22 percent for the plan offered by Wynn Resorts. The two entities are squaring off for a Region A license, which will be awarded by the state's gambling commission.

Thirty-five percent of voters would vote to repeal the casino law if the question makes it onto the ballot, with 58 percent saying they would vote against a casino law repeal, the poll said. The Supreme Judicial Court is weighing whether it should be placed on the ballot after Attorney General Martha Coakley ruled it ineligible.

"However, the Massachusetts Gaming Commission's decision about the Region A license could influence the outcome of a repeal effort," Chris Anderson, president of Anderson Robbins Research, wrote in a memo summarizing the poll. "If voters get their second choice for a casino in the Boston area, they will likely be much more open to repealing the law altogether."

The survey of 412 registered voters in "Region A" - Suffolk, Middlesex, Norfolk, Essex and Worcester counties - was conducted between June 6 and June 8, on landlines and cell phones.

The poll showed voters are aware of the battle for an eastern Massachusetts casino license, with 71 percent saying they are following the news "somewhat closely."

The poll also included favorable and unfavorable for elected officials and candidates for governor.

Coakley had a 59 percent favorable, 35 percent unfavorable rating. Her rival for the Democratic gubernatorial nomination, Treasurer Steve Grossman, had a 32 percent favorable/17 percent unfavorable rating. Charlie Baker, the frontrunner in

the Republican gubernatorial primary, garnered a 46 percent favorable/21 percent unfavorable rating. Boston Mayor Martin Walsh's favorable rating was 70 percent, with 11 percent unfavorable.

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THE COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS GAMING COMMISSION

| | | |
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| Re: | In re the Matter of:<br>REGION A CATEGORY 1 GAMING<br>LICENSING PROCEEDINGS | ) |

**WYNN MA, LLC'S OPPOSITION TO THE CITY OF BOSTON'S MOTION TO STAY PROCEEDINGS INVOLVING CATEGORY 1 LICENSE APPLICATIONS IN REGION A**

Wynn MA, LLC ("Wynn") respectfully submits this memorandum to the Massachusetts Gaming Commission (the "Commission") in opposition to the City of Boston's ("Boston") Motion to Stay Proceedings Involving Category 1 License Applications in Region A ("Motion").

## I. PROCEDURAL BACKGROUND

On May 15, 2014, the Commission issued a written decision that Boston is a surrounding community to the pending resort casino proposal submitted by Wynn. The 30-day statutory negotiation period for Boston and Wynn to reach a surrounding community agreement began on May 16, 2014 and ended on June 25, 2014.[1/] Wynn and Boston were unable to reach a surrounding community agreement by June 25, 2014. On June 26, 2014, as required under the Gaming Regulations and the *Handbook for Binding Arbitration* (the "Handbook"), Wynn filed a Notice to Commence Arbitration with Boston pursuant to 205 125.01(6)(c)(2).[2/] On the same day, Boston sent a letter to the Commission requesting it to stay all proceedings involving

[1/] With the Commission's approval, Wynn and Boston agreed to use nine (9) days of approved flex time.
[2/] A copy of this document is attached hereto as Exhibit 1.

Category 1 License Applications in Region A.[3/] On June 27, 2014, Boston filed with the Commission the pending Motion to Stay Proceedings Involving Category 1 License Applications in Region A.

On June 27, 2014, in response to the Motion, the Commission published a notice of public meeting to discuss Boston's request and reach a decision regarding the Motion. In advance of the Commission's July 2, 2014 public meeting, the Commission requested public comment relative to the agenda item. Also on June 27, 2014, Counsel for Wynn Tony Starr sent a letter to Counsel for Boston Eugene O'Flaherty, requesting a telephone conference on June 30, 2014 to discuss arbitrator selection.[4/] On June 30, 2014, Attorney O'Flaherty sent a letter to Attorney Starr, stating that pending the outcome of Boston's Motion, Boston does not intend to participate in negotiation or arbitration of the surrounding community issue.[5/] On July 1, 2014, Attorney Starr sent a letter to Attorney O'Flaherty, stating that because the parties were unable to agree on a single neutral arbitrator, Wynn selects Paul George, Esq. as its neutral, independent arbitrator.[6/]

Wynn opposes Boston's request that the Commission stay all proceedings involving Category 1 License Applications in Region A and requests that the Motion be denied.

## II. BOSTON'S REQUEST SHOULD BE DENIED BECAUSE IT IS INCONSISTENT WITH THE MASSACHUSETTS CONSTITUTION.

Boston's Motion should be denied because it effectively seeks to circumvent the specific procedures set out in the Massachusetts Constitution for the suspension of a law that has already been enacted. Article 48 of the Articles of Amendment to the Massachusetts Constitution, Initiative and Referendum, as amended, provides two distinct ballot petition procedures: (1) an

3/ A copy of this letter is attached hereto as Exhibit 2.
4/ A copy of this letter is attached hereto as Exhibit 3.
5/ A copy of this letter is attached hereto as Exhibit 4.
6/ A copy of this letter is attached hereto as Exhibit 5.

initiative petition, which contains a "constitutional amendment or law … which is proposed by the petition," Art. 48, The Initiative, II. Initiative Petitions, § 1; and (2) a referendum petition, which "may ask for a referendum to the people upon any law enacted by the general court which is not herein expressly excluded," Art. 48, The Referendum, III. Referendum Petitions, § 1. In other words, "[a]n initiative 'initiates' a proposed law or constitutional amendment, whereas a referendum 'refers' a law already enacted to the people for ratification or rejection." MCLE *Massachusetts Election Administration, and Campaign Finance and Lobbying Law*, § 5.2.1.

The Referendum portion of Article 48 contains a section entitled "Mode of Petitioning for the Suspension of a Law and a Referendum Thereon," which sets out specific procedures for a petition that seeks to suspend a law that has already been enacted by the Legislature. The petition must "request[] that the operation of such law be suspended," and it must be filed with the Secretary of State within 30 days after the law challenged in the referendum has become law. This provision further states that, "[i]f such petition is completed by filing with the secretary of the commonwealth not later than ninety days after the law which is the subject of the petition has become law a number of signatures of qualified voters equal in number to not less than two per cent of the entire vote cast for governor at the preceding biennial state election, then the operation of such law shall be suspended…." *See* Art. 48, The Referendum, III. Referendum Petitions, § 3.[7] There is no comparable provision in the Initiative portion of Article 48.

[7] Art. 48, The Referendum, III. Referendum Petitions, § 3, provides as follows:

> A petition asking for a referendum on a law, and requesting that the operation of such law be suspended, shall first be signed by ten qualified voters and shall then be filed with the secretary of the commonwealth not later than thirty days after the law that is the subject of the petition has become law. The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a fair, concise summary of the proposed law as such summary will appear on the ballot together with the names and residences of the first ten signers. If such petition is completed by filing with the secretary of the commonwealth not later than ninety days after the law which is the subject of the petition has become law a number of signatures of qualified voters equal in number to not less than two per cent of the entire vote cast for governor at the preceding biennial state election, then the operation of such law shall be suspended, and the secretary of the commonwealth shall submit such law to the people at the next state election, if sixty days intervene between the date when such petition is filed with the secretary of the

The ballot petition that was the subject of the recent decision by the Supreme Judicial Court in *Abdow v. Attorney General*, SJC-11641, did not, of course, follow the referendum procedure set out above for suspension of a law. It was labeled as an "initiative petition," submitted "pursuant to Section 3 of Part II of Amendment Article 48," which sought to amend G.L. c. 23K. It was not a referendum petition, it did not request that the operation of the Expanded Gaming Act of 2011 be suspended, and to Wynn's knowledge the petitioners did not submit the voter signatures required for suspension by the 90-day deadline set out in Article 48.

In effect, the City is asking to suspend the operation of the Expanded Gaming Act of 2011 pending a vote on the initiative petition in November, notwithstanding that none of the procedures for suspension of a law pending a vote thereon that are set out in the Massachusetts Constitution have been followed in this case. For that reason, Boston's Motion should be denied.

## III. LEGAL STANDARD

Under Massachusetts law, in order for a court to grant a stay of proceedings, the moving party, must demonstrate the following:

> (1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the plaintiffs likelihood of success on the merits, the risk of irreparable harm to the plaintiff outweighs the potential harm to the defendant in granting the injunction. *See Tri-Nel Management, Inc. v. Bd. Of Health of Barnstable,* 433 Mass. 217 (Mass. 2001).

If the moving party cannot demonstrate even one of these requirements the stay should be denied. *See Eck v. Dodge Chem. Co. (In re Power Recovery Sys.),* 950 F.2d 798 (1st Cir. 1991). Economic harm alone is not generally sufficient to demonstrate irreparable harm. *See Tri-Nel,*

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commonwealth and the date for holding such state election; if sixty days do not so intervene, then such law shall be submitted to the people at the next following state election, unless in the meantime it shall have been repealed, and if it shall be approved by a majority of the qualified voters voting thereon, such law shall, subject to the provisions of the constitution, take effect in thirty days after such election, or at such time after such election as may be provided in such law; if not so approved such law shall be null and void; but no such law shall be held to be disapproved if the negative vote is less than thirty per cent of the total number of ballots cast at such state election.

433 Mass. at 227-228. In addition, Boston must satisfy a fourth requirement: where the moving party seeks to enjoin government action "a judge is also 'required to determine that the requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public.'" *See Boston Police Patrolmen's Assoc., Inc. v. Police Dept. of Boston*, 446 Mass. 46, 49 (Mass. 2006).

Finding no support for its position in Massachusetts law, Boston cites two cases out of the State of California to support its request for a stay of the proceedings. *See Boston Motion*, p. 4. Boston apparently cited these California cases as examples where legislation was stayed pending statewide referenda: *Assembly v. Deukmajian*, 30 Cal. 3d 638, 657 (Cal. 1982) (holding that under article II of the California state constitution "the filing of a valid referendum challenging a statute normally stays the implementation of that statute until after the vote of the electorate"); *Lindelli v. Town of San Anselmo*, 111 Cal. App. 4th 1099 (Cal. Ct. App. 2003) (holding that the passage of interim legislation violated the stay provisions of the Elections Code, which provided that an ordinance subject to a referendum petition shall not take effect until the voters approve the ordinance in the referendum).[8/] However, Boston failed to mention that these cases relied on provisions in either the California Constitution or underlying legislation that expressly provided for statutory stays pending the outcome of the referendum. And, in fact,

[8/] *Assembly v. Deukmajian*, 30 Cal. 3d 638, 657 (Cal. 1982), involved a petition for referendum on California legislation that established new voting districts. *See id.* at 644. The court concluded that the California Constitution's provision containing "a clear negative implication that a statute challenged in its entirety by a duly qualified referendum is stayed from taking effect until it has been approved by the voters at the required election" applied to the reapportionment legislation at issue. *See id.* at 656. Thus, the court granted the plaintiffs' motion to stay because the California constitution expressly required it. *Lindelli v. Town of San Anselmo*, 111 Cal. App. 4th 1099 (Cal. Ct. App. 2003), involved a municipality that passed interim legislation to take the place of an ordinance that was the subject of a referendum petition. *See id.* at 1102. The plaintiffs requested a stay of the interim ordinance pending the referendum. *See id.* The court granted the stay holding that a "municipality may not evade this stay provision by repassing a materially identical ordinance as an interim measure until the referendum election." *See id.* The stay provision appeared in the Elections Code and provided that "when an ordinance is the subject of a referendum petition, it shall not take effect until the majority of voters voting on the referendum approve the ordinance." *See id.*

here, the petition does not request, nor does the Massachusetts Constitution provide for a stay pending the outcome of a referendum. Thus, the cases cited by Boston are not applicable here.

In contrast, Massachusetts courts have consistently denied requests for stays where the moving party fails to satisfy the required factors. For example, *Tri-Nel Management, Inc. v. Bd. Of Health of Barnstable,* 433 Mass. 217 (Mass. 2001), involved a municipality that passed an ordinance prohibiting smoking in all food establishments including bars, restaurants, and lounges. *See id.* at 218. Plaintiffs sought a preliminary injunction in the Superior Court requesting the court enjoin enforcement of the regulation. *See id.* at 219. The Superior Court denied plaintiffs' request. *See id.* Affirming the denial, the Supreme Judicial Court ("SJC") explained that "[t]o succeed in an action for a preliminary injunction, a plaintiff must show (1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the plaintiffs likelihood of success on the merits, the risk of irreparable harm to the plaintiff outweighs the potential harm to the defendant in granting the injunction." *Id.* (internal citations omitted). Importantly, the court noted that plaintiffs' failure to "establish a likelihood of success on the merits [wa]s sufficient to deny injunctive relief." *Id.* at 227.

In addition, the SJC noted that though plaintiffs argued that the smoking ban would interfere with existing customer relationships and cause a loss of income, economic harm alone "will not suffice as irreparable harm unless 'the loss threatens the very existence of the movant's business.'" *Id.* at 227-228.

Similarly, *Boston Police Patrolmen's Assoc., Inc. v. Police Dept. of Boston,* 446 Mass. 46, 49 (Mass. 2006), involved a request for a stay submitted by the plaintiff in Superior Court seeking to enjoin the city of Boston and the police department from collecting officer identification information. *See id.* at 47. The Superior Court denied the motion, which was

appealed to the Appeals Court where the stay was granted. *See id.* The SJC affirmed the Superior Court's order denying the stay. *See id.*

The court held that to receive a preliminary injunction the moving party must show:

> "(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the [moving party's] likelihood of success on the merits, the risk of irreparable harm to the [moving party] outweighs the potential harm to the [nonmoving party] in granting the injunction. . . When a party seeks to enjoin governmental action, a judge is also 'required to determine that the requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public.'" *Id.* at 49 (internal citations omitted).

The court denied the preliminary injunction because the plaintiff was unlikely to prevail on the merits. *See id.* Because the plaintiff could not demonstrate a likelihood of success on the merits there was no need to reach the additional factors. *See id.* at 53, n.5.

## IV. BOSTON'S MOTION SHOULD BE DENIED BECAUSE BOSTON HAS FAILED TO SATISFY THE FACTORS REQUIRED FOR GRANTING A STAY OF THE PROCEEDINGS.

As stated above, under Massachusetts law, in order for a court to grant a stay of proceedings, Boston must demonstrate the following: (1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the plaintiffs likelihood of success on the merits, the risk of irreparable harm to the plaintiff outweighs the potential harm to the defendant in granting the injunction. *See Tri-Nel Management,* 433 Mass. 217. In addition, enjoining government action requires a finding that the requested order promotes the public interest. *See Boston Police Patrolmen's Assoc.*, 446 Mass. 46, 49. Because Boston has failed to satisfy these factors, the Motion should be denied.

First, Boston has failed to establish that it would suffer irreparable harm if the stay is not granted. Indeed, Boston has failed to demonstrate what harm, if any, it would suffer if the Commission were to proceed with its thoughtfully outlined Category 1 licensing process for Region A. Boston's assertion that it will have "to devote considerable costs" to negotiate and/or

arbitrate with Wynn is an exaggeration. A surrounding community arbitration would likely be no more than three days of hearings. The cost to Boston to negotiate a surrounding community agreement does not amount to irreparable harm and is certainly not significant enough to justify halting the entire Category 1 licensing process for Region A. Other surrounding communities, such as Chelsea and Somerville, recently participated in the surrounding community binding arbitration process with knowledge that this SJC decision was pending. Moreover, even if Boston had to devote considerable costs to the arbitration process, the SJC has held that economic harm alone "will not suffice as irreparable harm." *See Tri-Nel Management,* 433 Mass. 227-228.

Second, Boston has failed to demonstrate that the alleged risk of irreparable harm to the Boston outweighs the potential harm to Wynn in granting the stay. As set forth more fully in Section V below, granting a stay would cause significant harm and undue prejudice to Wynn.

Finally, Boston has failed to establish that a stay of the proceedings is in the public interest. In its Motion, Boston contends that a stay is in the public interest because "any action Boston takes with respect to the ongoing negotiation and arbitration process may unfairly impact voters." Contrary to what Boston argues, proceeding with the surrounding community binding arbitration and licensing process will provide voters with more certainty. Certainty regarding the specific communities that will be affected by new casinos, as well as the specific financial benefits and infrastructure improvements that accompany those new casinos will help voters. Public policy favors a more informed electorate. In addition, Boston has employees and an office devoted to gaming, the Office of Gaming Accountability. If the stay is granted, Boston has not contemplated what will happen to that office and its employees. Finally, thirty communities have negotiated or arbitrated surrounding community agreements, and all of those communities knew that the petition was under review by the SJC. The public interest is best

served by holding Boston to the same deadlines and requirements as other surrounding communities in the Commonwealth.

## V. BOSTON'S MOTION SHOULD BE DENIED BECAUSE THE BALANCE OF HARMS PLAINLY WEIGHS AGAINST GRANTING A STAY.

### a. A Stay Of The Proceedings Would Cause Irreparable Harm To Wynn.

The assertion in Boston's Motion that a stay until the outcome of the referendum will not prejudice any of the parties is simply not true. Wynn would be unduly prejudiced by a stay pending the outcome of the referendum, particularly at this late date after significant expenditure of time and resources in these proceedings. Wynn continues to incur significant carrying costs, which include the costs of consultants, employees, land acquisition option payments, etc. These costs are hundreds of thousands of dollars a month. A further delay until after the November referendum would result in significant additional costs to Wynn. Wynn has also expended a considerable amount of time and energy to prepare its environmental filings in an effort to obtain a Secretary's Certificate prior to the Commission's decision. If a stay is granted, Wynn would also need to renegotiate its option agreements. Further, a delay would impact Wynn's projected opening date and funding to the Commission and the Commonwealth. Accordingly, a stay of the proceedings would result in significant harm and undue prejudice to Wynn.

### b. The Commission Should Reject Boston's Latest Attempt To Delay Proceedings.

In an attempt to avoid the surrounding community binding arbitration process set forth by the Commission, Boston has now asked the Commission to further delay awarding a gaming license for Region A until after the November referendum. Despite Wynn's attempts to discuss arbitrator selection, Boston has declined to participate in those discussions.[9/] Wynn submits that Boston has the right not to participate in the binding arbitration process. Indeed, the

[9/] *See* Exhibits 4 and 5.

Commission specifically addressed the consequences of a surrounding community's decision not to participate. Pursuant to 205 CMR 125.01(6)(a)(2):

> In the event a community designated a surrounding community fails or refuses to participate in the arbitration process set forth in 205 CMR 125.01(6)(c), the commission may deem the community to have waived its designation as a surrounding community. Provided, however, the commission may nevertheless impose as a condition on any a Category 1 or 2 license a community impact fee and any requirements it deems appropriate requirements for mitigation of impacts from the development or operation of a licensed gaming establishment.

As stated above, thirty communities have negotiated or arbitrated surrounding community agreements. All of these communities knew that the petition was under review by the SJC. Boston's decision not to participate in the arbitration process should not be rewarded. Nor should it further delay the licensing process. Rather, the Commission should reject Boston's latest delay tactic and follow the thoughtful process set forth in the Gaming Regulations.

## VI. CONCLUSION

For the aforementioned reasons, Wynn respectfully requests that the Commission deny Boston's Motion To Stay Proceedings Involving Category 1 License Applications in Region A.

Respectfully submitted,

WYNN MA, LLC

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**Samuel M. "Tony" Starr** | 617 348 4467 | tstarr@mintz.com

One Financial Center
Boston, MA 02111
617-542-6000
617-542-2241 fax
www.mintz.com

June 26, 2014

**VIA E-MAIL AND FIRST CLASS MAIL**

Stephen Crosby, Chairman
Commissioner Gayle Cameron
Commissioner Enrique Zuniga
Commissioner James F. McHugh
Commissioner Bruce Stebbins
MASSACHUSETTS GAMING COMMISSION
84 State Street, 10th Floor
Boston, MA 02109

**Re: Notice of Intent to Commence Arbitration with the City of Boston**

Dear Chairman Crosby, and Commissioners Cameron, Zuniga, McHugh and Stebbins:

This letter is a notice of intent to commence arbitration with the City of Boston, issued on behalf of Wynn MA, LLC ("Wynn") pursuant to 205 CMR 125.01 (6)(c)(2). Wynn will work with the City of Boston to select a neutral, independent arbitrator or arbitrators and will submit its best and final offer for a surrounding community agreement pursuant to M.G.L. c. 23K, § 15(9) to the arbitrator(s) and the City of Boston on July 2, 2014.

Very truly yours,

Tony Starr

Samuel M. Starr

cc: Eugene O'Flaherty, Boston Corporation Counsel (*via e-mail: Eugene.O'Flaherty@boston.gov*)
John Ziemba, Massachusetts Gaming Commission *(via e-mail)*
Jennifer Mather McCarthy, Mintz Levin (*via e-mail)*
Jacqui Krum, Wynn Resorts (*via e-mail)*

CITY OF BOSTON • MASSACHUSETTS

**Law Department**
City Hall, Room 615 Boston, MA 02201

June 26th, 2014

James F. McHugh
Acting Chairman McHugh and
Commissioners Cameron, Stebbins and Zuniga
Massachusetts Gaming Commission
84 State Street
Boston, MA 02109

Re: **Request to Stay Proceedings Relative to the Issuance of a Category 1 License in Region A**

Dear Acting Chairman McHugh and Commissioners Cameron, Stebbins and Zuniga:

As you are aware, on June 24, 2014, the Supreme Judicial Court issued an opinion in *Abdow v. Attorney General*, SJC-11641, which determined that the Attorney General erred in refusing to certify an initiative petition meant to prohibit casino gambling in Massachusetts for inclusion on the November ballot. The Court ruled that the initiative should be decided by the voters at the November election and ordered that the Attorney General be directed to certify the petition. Accordingly, on November 4, 2014 the citizens of the Commonwealth will decide whether to allow casino gambling in Massachusetts.

I was gratified to learn that the citizens of Boston will finally be given the opportunity to vote on this critical issue. We will know in a short time whether or not casino gambling will be permitted in Massachusetts. If casino gambling is prohibited, the issue of Category 1 Gaming Licenses in Region A will be moot. If it is allowed, I remain hopeful that the citizens of Boston will be able to vote on whether or not they approve of the pending casino proposals in Region A.

To prevent the needless expenditure of additional time, money and effort by the City of Boston, at a time when the future of casino gambling in Massachusetts is uncertain, the City respectfully requests that the Gaming Commission stay all proceedings before it concerning the issuance of a Category 1 License in Region A. Whatever the outcome of the November ballot initiative, it is prudent to pause to await that result.

Very truly yours,

Eugene L. O'Flaherty
Corporation Counsel
City of Boston

MINTZ LEVIN

**Samuel M. "Tony" Starr** | 617 348 4467 | tstarr@mintz.com

One Financial Center
Boston, MA 02111
617-542-6000
617-542-2241 fax
www.mintz.com

June 27, 2014

**VIA E-MAIL AND FIRST CLASS MAIL**

Eugene L. O'Flaherty
Corporation Counsel
City of Boston Law Department
Room 615, City Hall
Boston, MA 02201

*Eugene.O'Flaherty@boston.gov*

**Re: Notice of Intent to Commence Arbitration with the City of Boston**

Dear Attorney O'Flaherty:

By letter of June 26, 2014, Wynn provided notice to the Massachusetts Gaming Commission of Wynn's intent to commence arbitration with the City of Boston. For your convenience, a copy of that letter is enclosed.

In accordance with Commission regulations, Wynn looks forward to working with Boston to select a mutually acceptable arbitrator. Toward that end, please let me know when you are available for a telephone call with me on Monday, June 30, 2014 to discuss the arbitration and the selection of the arbitrator.

I am aware of the Motion to Stay Proceedings Involving Category 1 License Applications In Region A that was filed by the City of Boston with the Commission this afternoon. Nevertheless, Wynn believes that my proposed telephone call on Monday to discuss arbitrator selection is appropriate. Thank you for your anticipated cooperation.

Very truly yours,

Samuel M. Starr

cc: Catherine Blue, Esq., Massachusetts Gaming Commission (*via e-mail)*
John Ziemba, Massachusetts Gaming Commission *(via e-mail)*
Jennifer Mather McCarthy, Esq., Mintz Levin (*via e-mail)*
Jacqui Krum, Esq., Wynn Resorts (*via e-mail)*
Anthony J. Gallagher *(via e-mail)*

CITY OF BOSTON • MASSACHUSETTS
**Law Department**
City Hall, Room 615 Boston, MA 02201

VIA EMAIL

June 30, 2014

Samuel M. Starr
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111

John A. Stefanini
DLA Piper LLP
33 Arch Street, 26th Floor
Boston, MA 02110

Re: *City of Boston's Pending Motion to Stay Before the Massachusetts Gaming Commission*

Dear Messrs. Starr and Stefanini:

On Thursday, June 26, 2014, the City sent a letter to the Massachusetts Gaming Commission requesting a stay of all proceedings regarding Category 1 licensing in Region A in light of the Supreme Judicial Court's recent decision in *Abdow v. Attorney General*, SJC-11641. The next day, June 27, the City filed a formal motion to stay with the Commission. The City sent copies of its letter and motion to you. The Commission has informed the City that it will hear argument on its motion at the public hearing scheduled for Wednesday, July 2, after which the Commission intends to deliberate and render a decision on whether a stay of all proceedings is appropriate. The City will appear and argue its motion on July 2.

In light of its pending motion to stay, the City considers all negotiation and arbitration deadlines with respect to potential agreements with Wynn MA, LLC and Mohegan Sun Massachusetts, LLC to be suspended until the Commission renders its decision. Pending the outcome of the City's motion, the City presently does not intend to participate in negotiation and arbitration regarding the surrounding community issue.

Very truly yours,

Eugene L. O'Flaherty
Corporation Counsel
City of Boston

cc: Massachusetts Gaming Commission

MINTZ LEVIN

Samuel M. "Tony" Starr | 617 348 4467 | tstarr@mintz.com

One Financial Center
Boston, MA 02111
617-542-6000
617-542-2241 fax
www.mintz.com

July 1, 2014

**VIA E-MAIL (eugene.o'flaherty@boston.gov)**
**AND FIRST CLASS MAIL**

Eugene L. O'Flaherty
Corporation Counsel
City of Boston Law Department
Room 615, City Hall
Boston, MA 02201

**Re: Surrounding Community Arbitration Between City of Boston and Wynn MA, LLC**

Dear Attorney O'Flaherty:

By letter to you of June 27, 2014, I requested on behalf of my client Wynn MA, LLC ("Wynn") an opportunity to speak with you on June 30, 2014 about arbitrator selection for the above-referenced Surrounding Community Arbitration. By letter of June 30, 2014, you advised me that the City presently does not intend to participate in negotiation and arbitration regarding the surrounding community issue. Because Boston has declined Wynn's request that we discuss selection of an arbitrator, it appears the parties are thus unable to select a single arbitrator. Accordingly, Wynn selects Paul George, Esq. as its neutral, independent arbitrator. Please provide me with the name of the neutral, independent arbitrator selected by Boston so that Mr. George may contact Boston's selected arbitrator for the purpose of choosing a third neutral, independent arbitrator in accordance with the applicable regulations of the Massachusetts Gaming Commission.

Thank you for your prompt attention to this matter.

Very truly yours,

Tony Starr

Samuel M. Starr

SMS/pm

cc: Catherine Blue, Esq., Massachusetts Gaming Commission *(via e-mail)*
John Ziemba, Massachusetts Gaming Commission *(via e-mail)*
Jennifer Mather McCarthy, Esq., Mintz Levin *(via e-mail)*
Jacqui Krum, Esq., Wynn Resorts *(via e-mail)*
Anthony J. Gallagher *(via e-mail)*

*The Office of*
**SALVATORE LaMATTINA**
*Boston City Councilor - District One*



James F. McHugh. Commissioner
Massachusetts Gaming Commission
84 State St, 10th Floor
Boston, MA 02109

June 26, 2014

Dear Commissioner McHugh,

The Supreme Judicial Court's decision to allow the repeal expanded gaming question on the ballot this November could potentially have a huge impact on my entire district, which includes Charlestown, the North End and East Boston. As everyone is well aware, both the Wynn and Mohegan Sun proposals are located within my district (or just outside of it depending on who you speak to) and we've repeatedly asked for the chance to have referendums on both proposals and were refused those opportunities. This statewide referendum that was just approved will give all of us the chance to vote one last time and we'd like it to be as fair and transparent as possible. Therefore, I ask that the Gaming Commission please refrain from holding any other meetings or hearings until after the election. My constituents in Charlestown and East Boston have already spoken on this and have been ignored. They will now have to deal with another long casino campaign season and it's not fair to them to have to deal with the decision making process as well, especially if it ends up being futile if the repeal question passes.

It may or may not mean anything to you, but this is an issue that has haunted me for 6 years. As much as I would like it to subside, it hasn't. The residents of Charlestown are upset because Wynn hasn't been very forthcoming and my home neighborhood of East Boston is deeply divided because they feel they have been duped and cheated. Ultimately, if expanded gaming is to come to Massachusetts, we all feel that it should hinge on the decision of the voters of the Commonwealth. Let the vote play out and then proceed with the awarding of licenses-that is, if the repeal referendum fails.

I implore you to do what is right. Continuing with the licensing process will give the voters a false sense that their vote will even matter. They now have the opportunity that they've asked for. Please let them decide what is best for them. Thank you!

Sincerely,

Salvatore LaMattina
Boston City Council, District 1

Boston City Hall - 5th Floor, Boston, MA 02201 • (617) 635-3200 • FAX: (617) 635-4203 • salvatore.lamattina@cityofboston.gov

cc: Gayle Cameron, Commissioner
Bruce Stebbins, Commissioner
Enrique Zuniga, Commissioner

Commonwealth of Massachusetts
HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON, MA 02133-1054

CARLO BASILE
REPRESENTATIVE
1ST SUFFOLK DISTRICT
EAST BOSTON

ROOM 174, STATE HOUSE
TEL: (617) 722-2877
FAX: (617) 626-0736

Chair
Veterans and Federal Affairs

July 1, 2014

Mr. Stephen Crosby, Chairman
Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, MA 02109

Dear Chairman Crosby and Members of the Commission:

I write to you on behalf of my constituents in the First Suffolk District regarding the proposed development of a casino at Suffolk Downs, which straddles the communities of East Boston and Revere. Last fall, the people of East Boston voted against allowing a casino in our backyards and out of respect for that decision, I have previously urged this Commission to deny a license to the new Revere-only proposal for a casino at Suffolk Downs.

Last week the Supreme Judicial Court ruled that a question on repealing casino gaming in Massachusetts will be on the ballot this fall. I applaud the Supreme Judicial Court for allowing the people a chance to go to the ballot box in November to decide whether casinos should be allowed anywhere in the Commonwealth.

Until the people have had their say, I urge you to delay awarding licenses to any casinos, particularly in the Greater Boston area. We need to have stability in our communities as we deal with these important decisions.

In closing, I appreciate the opportunity to express my position to the Commission and hope to see this issue clarified in a timely fashion. If you have any questions, please feel free to contact me.

Sincerely,

**CARLO BASILE**
**State Representative**

# PUBLIC SUPPORT FOR ADHERING TO ORIGINAL TIMELINE

## MCG received a total of 287 form letters signed by individuals stating:

Commissioners

The City of Boston has asked you to "order an immediate suspension of all proceedings regarding the issuance of a Category 1 license in Region A pending the outcome of the November referendum. This is an undue burden for the volunteers who have worked so hard to bring this project to fruition.

Wynn Resorts, the City of Everett, and the hundreds of volunteer residents working on this project met every deadline and complied with every rule up to this point and a further delay in awarding this license is simply unfair and outrageous.

Boston is continually attempting to delay just because they missed their opportunity to be a host community. Now they are standing in the way of jobs and tax relief for Massachusetts tax payers.

We need jobs now. Not a year from now. We have waited long enough.

Boston has been granted enough delays and reconsideration. Don't let them hijack this process again for selfish reasons.

This further delay is unfair for Everett, Revere and surrounding communities that have been working diligently on this long and arduous process for the past two years.

Stick to the plan. Stick with the schedule!

**McDowell, Rebekah (MGC)**

---

**From:** Matewsky, Wayne (HOU) <wayne.matewsky@mahouse.gov>
**Sent:** Tuesday, July 01, 2014 4:13 PM
**To:** MGCcomments (MGC)
**Subject:** ATT Chairman Stephen Crosby
**Attachments:** Dear marty.docx

Dear Commissioners,

We are resubmitting the attached letter as we do not view Mayor Walsh's initiative as anything new. Once more his delaying tactic is an attempt to dictate policy of the Commonwealth. We , encourage the commission to move forward in the selection of a region A casino license.

Sincerely,

Wayne A. Matewsky
Everett State Representative

Massachusetts Gaming Commission
Attention: Chairman Stephen Crosby
84 State Street 10th floor
Boston, Ma. 02109

April 22, 2014

Dear Chairman Crosby,

Re: Boston a Host or Surrounding Community / Revenue Sharing

Boston is not Everett nor is it Revere but each is an independent municipality that is self-governed and functions in compliance with state and federal mandates. The cities of Everett and Revere unlike present day Boston have never made any claim that demonstrates dominance and/or an initiative that is deemed to be exclusionary to other cities and towns.

Furthermore, each city inclusive of Boston does not exist without the financial resources provided by the State of Massachusetts and the Federal Government. Accordingly, throughout our past and present history cities and towns have advanced predicated on the financial infusion of capital provided by government and in compliance with the mandates and controls established by government. At no time in the past since the inception and definition of Everett's and Revere's geographical boundaries, has it been set forth in defining these boundaries that either is a municipality of Boston.

All claims that Boston is a host community to either Everett or Revere because they touch a municipality of Boston would invalidate the intent and purpose in the establishment of land boundaries. Therein, if Boston is to prevail with its claim it must also recognize that it will have opened itself up to counter claims by both cities for revenue sharing and distribution. More specifically if boundaries are to be invalidated then too Boston's ability to retain revenues derived from venues equally becomes invalidated. Thus, requiring equal distribution to Everett and Revere regardless of whether a casino comes to fruition or not

Pursuant to Boston's claim it is understood that Boston does not exist without the infrastructure and resources of other cities and towns. Foremost recognize that the primary generation of Boston's electric power is provided from Everett. Secondly that Boston's water and sewerage is treated at, Deer Islands Water Treatment Plant in Winthrop. Furthermore, Boston's water is provided from the Quabbin, Wachusett reservoirs and the Ware River in central and western Massachusetts. These components demonstrate that the city of Boston is not self-contained but equally dependent on other cities and towns to function and prosper.

Boston is by choice and design the Capitol of Massachusetts Government and in this capacity is not granted any extra ordinary rights to pursue dominance over any other city and town in the Commonwealth. Furthermore, Boston demonstrates that its existence was and is predicated on the infusion of monies over decades from state and federal Government.

Logan International Airport was built with federal government monies and is regulated by Masport a state agency. The Boston Exhibition & Convention Center was built with state and federal monies and is regulated by Massport. Historical landmarks in and around greater Boston are regulated maintained and controlled by federal and state agencies. All commerce in the greater Boston harbor, all environmental mandates pursuant to Boston Harbor, all traffic within Boston Harbor is regulated and controlled by the

federal government and the state. Most important all state highways including known state thoroughfares in and thru Boston are maintained, regulated and controlled by the state.

Thus, Boston cannot arbitrarily claim possession of state roadways, the airport, or harbor in making any claim for being impacted as they become state and federal issues not borne by the city of Boston. Of course, we can examine this in an alternative measure recognizing all business travel to and from the suburbs to Boston impacts Everett and Revere and as such they are impacted by Boston. This claim lacks substance once more because the roadways are state financed, maintained and regulated.

In conclusion, I respectfully provide the aforesaid considerations for your judgment knowing also that the mandates within the Ma. Gaming legislation previously passed should pre-empt Boston from enjoining itself as a host community as opposed to a surrounding community.

Sincerely,

State Representative
Wayne A. Matewsky

Cc: House Speaker: Robert De Leo
Mayor of Everett: Carlo De Maria
Mayor of Revere: Dan Rizzo
Chief Executive Officer: Chip Tuttle, Suffolk Downs
Everett United

## McDowell, Rebekah (MGC)

**From:** MGC Website <website@massgaming.com>
**Sent:** Tuesday, July 01, 2014 4:20 PM
**To:** MGCcomments (MGC)
**Subject:** Contact the Commissioner Form Submission

**Name**

RALPH SHALSI

**Email**

RAS1158@AOL.COM

**Phone**

(603)396-6934

**Subject**

STICK TO THE PLAN

**Questions or Comments**

ENOUGH BOSTON.
NO MORE DELAYS.

AND
EVERETT DESERVES T HE CASINO.
WYNN WENT BY THE BOOK DID IT ALL ON TIME LIMITATIONS.
AND THAT CITY NEEDS TO CLEAN UP T HAT LAND

## McDowell, Rebekah (MGC)

**From:** MGC Website <website@massgaming.com>
**Sent:** Tuesday, July 01, 2014 4:15 PM
**To:** MGCcomments (MGC)
**Subject:** Contact the Commissioner Form Submission

**Name**

DIANA CULP

**Email**

HENRYANDMARIE@VERIZON.NET

**Phone**

(617)799-2304

**Subject**

NO MORE DELAYS. STICK TO THE PLAN

**Questions or Comments**

I WAS AT THE EV ERETT HEARING LAST WEEK.
EXCELLENT.
EVERETT GETS MY VOTE, AND I HOPE IT GETS YOURS.
THANK YOU

**McDowell, Rebekah (MGC)**

**From:** Glenn Bresnahan [mailto:glenn.bresnahan@gmail.com]
**Sent:** Tuesday, July 01, 2014 3:14 PM
**To:** MGCcomments (MGC)
**Subject:** Comment on Request to Defer

July 1, 2014

Dear Commissioners,

I write to you to most strongly urge you to proceed with the issuing the Region A license as expediently as possible and to deny requests for further delays. This process has already been unduly delayed for a variety of reason, but many related to unreasonable requests from the City of Boston. This most recent request is yet another example.

In this particular case, the desires of the primary stakeholders, the license applicants, Mohegan Sun and Wynn Resorts, and the host communities, Revere and Everett, need to take precedence of the whims of Mayor Walsh and the city of Boston. It is unconscionable to ask the two license applicants to continue spending funds and effort in promoting and developing their projects through November without a decision on which will be awarded the license. The damage already caused by chilling the effect of the Repeal effort on companies considering doing business in the Commonwealth is incalculable. Please to not contribute further to this negative impact by delaying this decision any longer. The City of Boston has been correctly designated by your commission as a surrounding community and Mayor Walsh's demands should be given no more consideration than any other surrounding community and very much less weight than those form the Mayors of Revere and Everett.

Moreover, I strongly encourage you to impose binding arbitration on surrounding community mitigation for the City of Boston without further delay.

Finally, as a third generation Revere resident, I strongly endorse the Mohegan Sun/Suffolk Downs proposal for Revere. Revere has a rich history as an international tourist destination, as well as a history of racing and gambling. The Mohegan Sun project in Revere will certainly have the most positive impact for the Greater Boston area and the Commonwealth overall.

Sincerely,

Glenn Bresnahan

Revere, MA

NO EASTIE CASINO

July 1, 2014

**BY EMAIL**
MASSACHUSETTS GAMING COMMISSION
84 State Street
10th Floor
Boston, Mass. 02109

**RE: City of Boston's Motion to Stay Proceedings in Region A**

Dear Commissioners:

We write in support of the city of Boston's recent motion for a brief stay in the Region A licensing process pending the outcome of the ballot initiative regarding repeal of the Expanded Gaming Act now scheduled for a vote on November 4, 2014.[1] We believe that this request is timely, prudent, and truly in the best interests of all parties and the region.

This Commission has already in one instance flatly rejected[2] and in another willfully influenced its own proceedings to deny[3] the city of Boston's statutory right to vote on a casino at Suffolk Downs—thereby effectively disenfranchising approximately 639,479 Massachusetts residents twice over.[4] We believe that it is now time for a full stop to the Boston-area licensing process until those potentially most affected by these developments outside of Everett and Revere are able to be heard.

We further believe that this request is equitable given that this Commission has already agreed to a stay of applicant MGM Springfield's $85 million non-refundable licensing fee following the award of its license in Region B. Now that this precedent has been set, receipt of these fees is no longer a reasonable justification for moving forward with the licensing process. As Boston residents and taxpayers, we are strictly opposed to any further city resources going toward Region A surrounding community negotiations until the repeal question has been answered in November.

We urge the Commission to grant this stay in the interest of allowing a fair, objective conversation about the future of casinos in the Commonwealth. Thank you for your careful consideration of the city of Boston's request.

NO EASTIE CASINO

Matt Cameron, General Counsel
Celeste Ribeiro Myers, Co-Chair

[1] *See Abdow* v. *Attorney General*, SJC-11641 (June 24, 2014)

[2] The city of Boston rejected a gaming establishment at Suffolk Downs through an election held in East Boston on November 5, 2013. The Gaming Commission subsequently determined that it would override this vote and make a special exception for new applicant Mohegan Sun to proceed with a so-called "Revere-only" gaming establishment on the same two-city site in apparent violation of G.L.C. 23K §15(13).

[3] As documented in extensive detail in our letter to the Inspector General dated May 15, 2014 and supporting exhibits, we are now aware that the Commission not only intentionally withheld a lease agreement between Suffolk Downs and Mohegan Sun which would have confirmed Boston's host community status from the city of Boston and the general public, but then inappropriately advised Suffolk Downs as to how to amend this provision to disenfranchise the city of Boston.

[4] We are equally concerned for the residents of Charlestown, who have never had an opportunity to be heard on the competing proposal on their doorstep in Everett, as well as residents of Winthrop, Somerville, Chelsea, and other surrounding communities facing the inevitable—and in many cases unmitigable—impacts from either of these proposals.

**McDowell, Rebekah (MGC)**

**From:** kcoogan@atlantic-associates.com [mailto:kcoogan@atlantic-associates.com]
**Sent:** Tuesday, July 01, 2014 2:20 PM
**To:** MGCcomments (MGC)
**Subject:** Region A decision

Greetings Commissioners:

I am opposed to the City of Boston's request to the Massachusetts Gaming Commission that it suspend its proceedings regarding the issuance of a Category 1 license in Region A pending the outcome of the November referendum.

Granting such a request would be unfair for the following reasons:

(1) It would be unfair to all the cities and towns and to the casino operators who have used their alloted time to negotiate and complete mitigation agreements for casinos that will operate in Plainville, Springfield, Everett or Revere.

(2) It would be a disservice to the voters of Massachusetts because it would allow to remain an element of uncertainty that can be easily avoided if the Region A license is awarded prior to the November referendum. Awarding the license before the referendum would allow the voters to make a more informed decision because they would know exactly where the casinos would be located.

Sincerely,

Kevin P. Coogan

**Bresilla, Colette (MGC)**

**From:** jafratrish@aol.com
**Sent:** Tuesday, July 01, 2014 11:17 AM
**To:** MGCcomments (MGC)
**Subject:** Re: Stick to the plan. Stick with the schedule!

Trish Pratt
www.myJafra.com/TrishPratt

## Bresilla, Colette (MGC)

**From:** Susan Wetherall <swetherall@msn.com>
**Sent:** Monday, June 30, 2014 9:39 PM
**To:** MGCcomments (MGC)
**Subject:** Stick to the plan. Stick with the schedule!

Commissioners

For heaven's sake, there were two meetings in which the two plans were put forward, explained and defended, and it was very clear to me that Revere failed to present a coherent, well thought out plan. And they realized it, so now they want to delay. It seems a last ditch effort either get a casino in Revere despite the shoddy planning or get rid of the present Gaming Commission and the work they have already done for the state. Revere and Boston would rather everyone lost than that Everett be granted the license. I was astounded last Wednesday to listen to the Charlestown people talk about Everett's selfishness and carelessness. Complaining about the huge smoke stack in Everett, that blights their nights, when the stack is actually in Boston, in Charleston to be exact, and put there to get it as far away from their town as they could. According to them, heavy street traffic seems to be Everett's fault as well and could only be made worse by any attempt on Everett's par!
t to improve their own territory. This while Charleston, who pays their taxes to Boston, were citing as their reason and justification that they wanted to improve their own territory. It appears that they would be uncomfortable with the idea that people might just like to come to Everett to enjoy themselves at the casino and that would be calamitous for the good people of Charleston. Hoards of people making their way to somewhere else? Just awful. I don't know, folks,it seems pretty straight forward that this latest effort by Boston to delay the decision until the ballot question has been voted on is just another way of saying, hold it, just give us more time and we know we can convince you we are serious. If they were serious, they would have their ducks in order now. They would stand on the merits of their plan, rather than attacking the other plan, and throwing grit into the whole process. We have been asked by Wynn not to talk about the other plan or make accusa!
tions of any kind. If the above appears to violate that requ!
est, then I apologize.

I was impressed by the demeanor of the Gaming Commission the other night. I believe the Commission is sane and realistic and fair. The fact that you want to hear from us on this delay speaks to that. Thanks for all your hard work.

There follows a letter prepared by the Wynn/Everett people for those of us who might not want to add our own words. It does reflect my own ideas, and so I endorse it.

has asked you to "order an immediate suspension of all proceedings regarding the issuance of a Category 1 license in Region A pending the outcome of the November referendum. This is an undue burden for the volunteers who have worked so hard to bring this project to fruition.

Wynn Resorts, the City of Everett, and the hundreds of volunteer residents working on this project met every deadline and complied with every rule up to this point and a further delay in awarding this license is simply unfair and outrageous.

Boston is continually attempting to delay just because they missed their opportunity to be a host community. Now they are standing in the way of jobs and tax relief for Massachusetts tax payers.

We need jobs now. Not a year from now. We have waited long enough.

Boston has been granted enough delays and reconsideration. Don't let them hijack this process again for selfish reasons.

This further delay is unfair for Everett, Revere and surrounding communities that have been working diligently on this long and arduous process for the past two years.

Stick to the plan. Stick with the schedule!

--
Susan Wetherall
swetherall@msn.com
Cambridge 02139

## Bresilla, Colette (MGC)

**From:** MGC Website <website@massgaming.com>
**Sent:** Monday, June 30, 2014 6:08 PM
**To:** MGCcomments (MGC)
**Subject:** Contact the Commissioner Form Submission

**Name**

Carol Meninger

**Email**

cameninger@aol.com

**Phone**

(781)322-0271

**Subject**

casino location selection

**Questions or Comments**

I would request that you stay with the original schedule for selecting the casino location for the Boston area. Then the voters of Massachusetts will know exactly where the casino will be located when they vote in November.
Thank you

## Bresilla, Colette (MGC)

**From:** Florida Cacicio <fcacicio@hotmail.com>
**Sent:** Monday, June 30, 2014 8:04 PM
**To:** MGCcomments (MGC)
**Subject:** Regional A license

Dear MGC,
My name is Florinda Cacicio I am a resident of Revere Mass and have written several letters in support of the casino in our city, I now write to you in hopes that the licensing for the Regional A license still move forward as planned. Licenses have been awarded already and I only think it fair that this Region A license go through the same process. Please don't let Marty Walsh or anyone else dictate what they think the correct process should be! All I know is that I have worked closely with lots of Great people from Mohegan Sun and Suffolk Downs and I think it unfair for us not to have our chance at this great opportunity!! I thank you at the MGC I know this has been a long process but, I also know that we in Revere are prepared to work hard to make the Casino in our city a reality. Give us that opportunity! Thank you for time and consideration on this matter.
Sincerely,
Florinda Cacicio

Sent from my iPhone

## Bresilla, Colette (MGC)

**From:** Michael Vitagliano <fenwaysfo@gmail.com>
**Sent:** Monday, June 30, 2014 9:53 PM
**To:** MGCcomments (MGC)
**Cc:** seagullconsult@msn.com
**Subject:** Region A Decision Boston Motion

Dear Mass. Gaming Commission,

As residents of the surrounding communities, we feel that the motion to dismiss the propoasl regarding the development of a casino in the Region A district must be repealed. We view the casino as an economically beneficial addition to our neighborhoods, which along with the recent opening of the Assemply Row Plaza, will enhance our lives and the lives of those in nearby communities as well.

Sincerely,
Michael Vitagliano
Jeff Altenor
Conrad Tiedeman
883 Fellsway Medford MA

Tamara Shubin
86 Bunker Hill St. Charlestown MA

## Bresilla, Colette (MGC)

**From:** Kim Luiso <artistkimluiso@yahoo.com>
**Sent:** Monday, June 30, 2014 4:59 PM
**To:** MGCcomments (MGC)
**Subject:** Postponing a license in Region 'A'

I am long time resident in the city of Revere. I just want to take this opportunity to express my feelings in regards to the upcoming hearing you have scheduled for July 2nd. Issue on hand 'Postponing a license in Region 'A'.

There shouldn't be any holding off on going forward to issue the license in Region 'A' until the vote in November. As a resident who supports the Mohegan Sun at Suffolk Downs proposal the people of Revere have been thru so many hurdles and it seems like this is just one more. We had to vote not once but twice, and I think that our results of both votes showed how badly we want this. We have had to deal with dates being pushed back for one reason or another will this never ends.
We are feeling a bit drained..but yet we are ready to re vote again in November. I am confident that it will pass statewide because we desperately need the jobs, and the revenue in this state. Whether its Revere or Everett (preferably Revere) if you were to grant the license as scheduled we would be able to start building the day after the ballot vote, but if you uphold Mayor Walsh's request we wouldn't be able to do that because The Mass Gaming Commission would still have to issue a license.

I understand Mayor Walsh's concerns but..he always knew just like the rest of us that there was a possibility this could make the ballot and this shouldn't change the timeframe of issuing the license for region 'A', since especially two other licenses have been issued.

So, in closing I ask for you to proceed on schedule in issuing the license for Region 'A' and not hold this back any longer.

Mohegan Sun at Suffolk Downs is the right choice!

Sincerely,
Kim Luiso

**Bresilla, Colette (MGC)**

**From:** oriana6368@comcast.net
**Sent:** Monday, June 30, 2014 2:27 PM
**To:** MGCcomments (MGC)
**Subject:** Region 'A' decision
**Attachments:** REGION A.docx

Good Afternoon members of The Mass Gaming Commission,

I have attached a letter regarding my feelings on the Region 'A' decision.

Thank You for your time,

Matilda Bonfardeci

Dear Members of The Mass Gaming Commission,

My name is Matilda Bonfardeci and I am long time resident in the city of Revere. I just want to take this opportunity to express my feelings in regards to the upcoming hearing you have scheduled for July 2nd, issue on hand 'Postponing issuing a license in Region 'A' until the people vote in November'.

I am so disappointed that the Mass Gaming Commission is even entertaining this idea. There shouldn't be any holding off on going forward to issue the license in Region 'A' until the vote in November it's just ridiculous. As a resident who supports the Mohegan Sun at Suffolk Downs proposal I am floored by this.
We the people of Revere have been thru so many hurdles and it seems like this is just one more. We had to vote not once but twice, and I think that our results of both votes showed how badly we want this. We have had to deal with dates being pushed back for one reason or another and with all due respect this is beginning to feel like a roller coaster ride that never ends.
We are feeling a bit drained..but yet we are ready to re vote again in November. I am confident that it will pass statewide because we desperately need the jobs, and the revenue in this state. Whether its Revere or Everett (preferably Revere) if you were to grant the license as scheduled we would be able to start building the day after the ballot vote but if you uphold Mayor Walsh's request we wouldn't be able to do that that because The Mass Gaming Commission would still have to issue a license. This is crazy, even as I write this, its just crazy!

I understand Mayor Walsh's concerns but..he always knew just like the rest of us that there was a possibility this could make the ballot and this shouldn't change the timeframe of issuing the license for region 'A' since especially two other licenses have been issued.

So, in closing I ask for you to proceed on schedule in issuing the license for Region 'A' and not hold this back any longer it's just not fair.

While I am at it too Mohegan Sun at Suffolk Downs is the right choice! :)

Sincerely,
Matilda Bonfardeci

## Bresilla, Colette (MGC)

**From:** Sondra Fabiano <sondrafabiano@verizon.net>
**Sent:** Monday, June 30, 2014 9:45 AM
**To:** MGCcomments (MGC)
**Subject:** Region A Decision
**Attachments:** Keep The Dice Rolling.pdf

Comments for Region A Decision - Meeting July 2.

Thank you.

Sondra Fabiano
Fabiano Oil Corp
508-243-8872

**Keep The Dice Rolling – Vote NO On Boston's Plan To Stop Casino Process**

As a small business owner I strongly urge the Mass Gaming Commission to move forward with its efforts to site a casino in Region A.

Your work has been steady, planned, fair and transparent.

A motion to stay the Category 1 gaming license in Region A would simply be a win for the group who wants to repeal the Massachusetts Gaming Law. It would send the wrong message to voters that the Commission is giving up on the casino efforts and jobs for small businesses - many of whom are veterans, minority and women-owned.

A stay may impact voters into thinking the state is abandoning the plan to site casinos.

Now that a question is on the November ballot, it is critical the Commission press forward. This will tell voters the casino plan is still vibrant and important to jobs and the economic wellbeing of this state.

Now is not the time to sit back and become idle. Too much time, money and effort has been spent by this state. The city of Boston says that a stay must be put in place because they will have to spend more money. If the Commission stops now they will be throwing millions of taxpayer dollars out the window!!

Obviously Boston is upset. They are a surrounding community to a planned casino and had hoped for big bucks and to date have not received the huge wind fall. Delaying the process would be to their advantage.

The Commission knows delaying the process would not be to the advantage of the majority of the people of the state of MA, jobs and the economy.

Please, vote NO on July 2 on the motion. Don't send the wrong message to voters.

Thank you,

Sondra Fabiano
President
Fabiano Oil Corp
Fabiano Energy

## Bresilla, Colette (MGC)

**From:** Joanne Haynie <joannehaynie@gmail.com>
**Sent:** Monday, June 30, 2014 1:27 PM
**To:** MGCcomments (MGC)
**Subject:** Wynn Casino

I would like to say enough delays for Boston. STICK TO THE PLAN & DO WHAT YOU SAID YOU WERE GOING TO DO. Boston had their chance and they missed their opportunity to be a host community. Again no more delays. You need to make the right decision so we can get started on the construction of the Wynn Casino and hotel and put many jobs out there for the people. So many people out of work. PLEASE do the right thing for everyone. Wynn Resorts, The City of Everett & hundreds of volunteer residents working on the project have met every dead line & every rule up to this point. Boston should not be included in anything at this time. They missed out and I do not want politics to be used. That's all we get in this state and as a resident of this state I am sick and tired of everyone being afraid of standing up to what is right. DO THE RIGHT THING

Thank you

## Bresilla, Colette (MGC)

**From:** atjp143@aol.com
**Sent:** Monday, June 30, 2014 1:17 PM
**To:** MGCcomments (MGC)
**Subject:** Regian A Decision

Dear Members of the Commission,

I am writing to you in opposition of the June 27th request from Mayor Walsh in regards to delaying the awarding of the Region A license until after the November election.

I strongly feel that the people of the Commonwealth of Massachusetts should know as to who the license is being awarded to before making their decision and thereby casting their vote.

When Caesars withdrew and Mohegan applied for the Region A license, a special (second) election was held in Revere as the commission wanted to be sure that the "people" knew exactly what they were voting for.

I feel that it is only fair that the people of this fine Commonwealth also know exactly who and what they will be voting for in November.

Thank you for your time and consideration.

Anna Todesca
216 Orient Ave.
East Boston, MA 02128 617-569-1498

## Bresilla, Colette (MGC)

**From:** Richard OBrien <papao@comcast.net>
**Sent:** Monday, June 30, 2014 12:35 AM
**To:** MGCcomments (MGC)
**Subject:** We need the gaming comm to stick to the original plan

Sent from my iPad

## Bresilla, Colette (MGC)

**From:** Ana <ailanzilli@hotmail.com>
**Sent:** Monday, June 30, 2014 1:02 PM
**To:** MGCcomments (MGC)
**Subject:** Potential delay of regional A license

Dear MGC,
My name is Ana Lanzilli and I am writing to you in regards to the potential delay of the Regional A license. As someone who has been actively seeking a casino in the Boston area, particularly in favor of the Mohegan Sun plan, I think there is absolutely no reason in delaying the awarding after the November vote. Two licenses have already been granted and there is no reasonable explanation on why the last one should have any delays. Going into the voting booth in November, every registered voter should know where the casino would potentially be in. It would be a disservice not to provide them with that key information. The casino for region A is either going to be located in Revere, the favorite, or Everett, Not Boston. Why should Marty dictate how the license process will proceed? I know the commission has had a very difficult job, and hope you continue to do the right thing not only for the citizens,but for our state. Awarding the license according to the current timeline is the right thing to do. Thank you for your time.

Respectfully,
Ana Lanzilli

Sent from my iPhone

## Bresilla, Colette (MGC)

**From:** SMccann@aol.com
**Sent:** Monday, June 30, 2014 12:25 PM
**To:** MGCcomments (MGC)
**Subject:** (no subject)

PLEASE STICK TO THE PLAN!! WE WANT WYNN EVERETT!!!!!!!!!!!!!!!
Thanks so much,
Stacey

## Bresilla, Colette (MGC)

**From:** MARK <MarkRika2@msn.com>
**Sent:** Monday, June 30, 2014 10:43 PM
**To:** MGCcomments (MGC)
**Subject:** RE: Boston Mayor's Request to Delay

Dear Commissioners,

I am writing to you concerning the latest in a long list of delays caused by the Mayor of Boston. Honestly, if it hadn't been for all his rhetoric the past few months the Commission would have already chosen the Eastern Mass site by now.

With that being said, his latest request to delay the announcement till after the referendum vote has been cast does have some merit is some ways. I'm sure his concern has more to do with lawsuits and other legal issues that may arise as a result of this vote, but I heard an interesting thought the other day that made me think.

Assuming the Gaming Commission does make their announcement in September as planned. Could there be negative fallout from the voters of the host community and surrounding cities of their Casino bid that lost the Eastern Casino license? Basically a mentality of .... If we can't have a Casino, I want make sure you don't as well, therefore, they vote against the expanded gaming?

This whole referendum vote is going to get a lot of attention over the next several months. I for one after learning the SJC made their decision that "expanded gaming" would be a binding ballot question, have been pondering a few questions of my own. I know the State Legislature approved the Casino Bill, but with a little research, I also discovered they have historically through the years approved Lottery Tickets, Scratch Tickets and Keno. In each case none of these addicting games was voted on by the Massachusetts voters? Why the double standard when it comes to Casino's? Shouldn't all Massachusetts Residents have a say on all forms of gambling? I wonder how many of these petitioners supporting the referendum vote are store owners that feel they will loose monies from their business if and when the Casino's are built? Maybe the ballot question should include all of the above mentioned games? In actuality, the Lottery, Scratch Tickets and Keno seem to contribute more to the addicting problem in this State than any Casino resort would. These games of chance are too readily available to the low income folks that can least afford to gamble. Lets have a full referendum vote that will truly address the addiction problems being stated by the anti-casino groups. Now that would be a fair and equal reason for a referendum vote.

Mark Manganiello

## Bresilla, Colette (MGC)

**From:** MGC Website <website@massgaming.com>
**Sent:** Sunday, June 29, 2014 9:29 AM
**To:** MGCcomments (MGC)
**Subject:** Contact the Commissioner Form Submission

**Name**

Phyllis LaMarca

**Email**

phyl806@hotmail.com

**Phone**

(781)272-2661

**Subject**

Casinos in MA

**Questions or Comments**

I will never understand why you want to make it difficult to have casinos in MA. I go to Foxwoods and all my friends and just about every person from Massachusetts goes out of state to gamble. It makes NO SENSE! Why would you want MA residents to continue to support out of state casinos? It seems to me that your job would be to help MA get all the money that is spent out of state. The only way to make that happen is to get casinos in MA ASAP and fight as hard as you can to stop the games and pay offs that seem to be the hold up. We all know that money talks and..... :) That should NOT apply to this situation. The full cooperation of the commission is needed to to what best for MA. Jobs, construction and service are benefits that MA needs. Do the right thing and make it easy for MA residents to STOP giving other states the benefits of our m! oney. Better spent here in MA than all over the country!

**Bresilla, Colette (MGC)**

**From:** Paul <pmorceau@juno.com>
**Sent:** Sunday, June 29, 2014 8:49 AM
**To:** MGCcomments (MGC)
**Subject:** Everett Casino

Massachusetts Gaming Commission

Dear Commissioner:

I am a lifelong Charlestown resident and I fully support the Everett casino. There is a long standing relationship between Charlestown and Everett. My father worked at the Eastern Gas and Fuel in Everett for 30 years. I am active in the American Legion in Charlestown but I was also involved in veterans activities in Everett for 20 years with the Michael J Fordi Post 3 on Main Street. Everett is a great community with a tremendous school system and a lot of civic pride like Charlestown

Everett residents and Charlestown residents suffered from the heavy chemical industry that existed in Everett epitomized by the Monsanto plant. I can remember the yellow haze from the sulfur pile that would descend over Charlestown. Now that blight can be removed and I think that the Wynn casino is going to provide us a solution that has escaped everyone else to date. The casino will brings jobs back to Charlestown and other surrounding communities. I have every faith that the traffic problems will be ameliorated by the Casino developers. They have a motivation the private sector need for profits to accomplish what government has failed to do for my entire life.

Let Everett have their casino and let the rest of us benefit. Bring jobs back to the Mystic River basin.

Sincerely yours

Paul Morceau 617 242 4781
44 Mt Vernon St
Charlestown, Mass 02129

## Bresilla, Colette (MGC)

**From:** MGC Website <website@massgaming.com>
**Sent:** Sunday, June 29, 2014 7:26 AM
**To:** MGCcomments (MGC)
**Subject:** Contact the Commissioner Form Submission

**Name**

Joseph Daly

**Email**

jdaly54100@aol.com

**Phone**

(617)387-7949

**Subject**

License

**Questions or Comments**

Your title is Mass Gaming commission Not Boston Gaming commission I live in Everett and hope to get the casino .I think that your decision should not be based on what Boston wants ask the Mayors of Revere or Everett they are from Mass also.I think the Mayor of Boston has too much say.Stay with your plan and award the license .

## Bresilla, Colette (MGC)

**From:** David Kelston <dkelston@sswg.com>
**Sent:** Sunday, June 29, 2014 11:13 PM
**To:** MGCcomments (MGC)
**Subject:** Region A Decision: Boston Motion

Dear State Gaming Commission,

I am a resident of Winthrop, Massachusetts and an attorney. I understand that Boston has requested that the Commission delay further casino designations until after the state-wide referendum vote. I urge you not to do so. The more information voters have as to where casinos will be, the better. Delay of the mandated processes – and they are still the law – benefits no one.

Thank you for considering my comments.

David Kelston
550 Pleasant Street
Winthrop, Mass 02152

## Bresilla, Colette (MGC)

**From:** Joe Todesca <joetodesca@yahoo.com>
**Sent:** Sunday, June 29, 2014 11:21 PM
**To:** MGCcomments (MGC)
**Subject:** Issuing Region A license

Dear Commission, my name is Joe Todesca resident of East Boston. I have written and testified in front of you on numerous occasions in the past on behalf of Mohegan Sun and Suffolk Downs. I am writing this time regarding the issuing of the Region A license being awarded on schedule. I know that there has been a number of elected officials that have urged you to postpone awarding the license until the Repeal question has been voted on in November, I however urge you to award it in late August/early September as originally planned. There are numerous reasons I feel that the timeline of this decision should not change. First, two of the gaming licenses have already been awarded, one in Plainville and the other to MGM in Springfield, both of these licensees would be heading into a campaign knowing that they are fighting for something. It would not be fair to Mohegan or Wynn to spend millions on a campaign and in the end not get the license. These companies already stand to lose millions if the Repeal is successful. Second, when the citizens of the Commonwealth step into the booth in November, they deserve the right to know where the gaming facilities are going, especially the citizens in this region who have fought and sacrificed so much over the last two years to ensure that their community be awarded the license. This has been a long exhausting journey for so many people and postponing the awarding of the Region A license in my opinion would be so disheartening to so many supporters in this region. I have said it in the past and I will say it again, I know that the Commission has a very difficult job and I know that this is another difficult decision that you are presented with, but I hope that you take the things I said in this letter into consideration. I look forward to your decision on this matter hopefully this week.

Thank you,

Joe Todesca

Sent from my iPad

## Bresilla, Colette (MGC)

**From:** Linda Delloiacono <rubyred7379@aol.com>
**Sent:** Sunday, June 29, 2014 10:24 PM
**To:** MGCcomments (MGC)
**Subject:** Please no more delays

No more delays please! Sincerely, Linda Delloiacono

Sent from my Verizon Wireless 4G LTE smartphone

## Bresilla, Colette (MGC)

**From:** Louise Zawodny <LAFrank1@comcast.net>
**Sent:** Sunday, June 29, 2014 7:58 PM
**To:** MGCcomments (MGC)
**Subject:** City of Boston request for delay

As a resident of Everett who has participated in and have followed the implementation of the Mass Gaming Law for well over a year., I respectfully urge the Commissioners to deny any requests for further delays being requested by the City of Boston. To protect the intent of the gaming legislation you must continue your deliberations, procedures and process. Please do not stop the process. The upcoming ballot question will be voted on it's own merit, pro and con. This referendum question in no way should interfere with the implementation and timeline of the MGC. Thank you.

Louise A. Zawodny
39 Parlin Street #603
Everett, MA 02149

## Bresilla, Colette (MGC)

**From:** Deborah Kuhn <deborahkuhn@comcast.net>
**Sent:** Sunday, June 29, 2014 7:37 PM
**To:** MGCcomments (MGC)
**Cc:** 'Deborah Kuhn'
**Subject:** Region A Decision - Boston Motion

Dear Gaming Commission,

I urge the Gaming Commission to deny the June 27th motion by the City of Boston to stay proceedings involving the Category I license applications in Region A. I make the following arguments for your consideration:

1) The Supreme Judicial Court has decided that an initiative petition opposing gaming can appear on the November ballot, but unless and until a majority of the voters agree with that initiative petition in November, the legislation enacted by the Massachusetts Legislature and the regulations duly promulgated by the Massachusetts Gaming Commission remain the law and that law should be, perhaps must be, enforced.
2) Boston argues that the City of Boston will incur expenses to negotiate with the potential gaming operators and that these expenses would be unnecessary if the initiative petition passes. But various other municipalities, including my hometown of Winthrop, have already incurred those expenses necessary to conduct such negotiations, and a host of business and property owners have already invested in planning to capitalize on and even enhance the benefits of the casino industry's investment and business activities in the Commonwealth. Boston should not be allowed to change the law in order to benefit itself at the expense of others.
3) Clearly, the voters will benefit greatly from the Gaming Commission's proceeding with a designation in Region A. Once a decision is made between the Everett and the Revere casino proposals, the voters will have important information and therefore greatly enhanced ability to evaluate the initiative petition because they will know exactly where the major casinos will be located. The SJC has made clear that a designation, or even a consummated contract, will not hinder the voters' ability to vacate such decisions through the initiative petition process. The sooner the Gaming Commission can make its Region A decision, the more time the advocates on both sides will have to make their case with full knowledge of the casino location.

Considering the clear benefits to the voters from the Gaming Commission's proceeding swiftly to make a designation on the Region A casino license, I can see no good reason to delay implementation of the duly-enacted gaming law, notwithstanding the self-serving argument from the City of Boston and its prognostications about the will of the voters.

Thank you for your kind consideration.

Deborah Kuhn
550 Pleasant Street
Winthrop, MA 02152
617 699 9105

**Bresilla, Colette (MGC)**

**From:** priestley749@comcast.net
**Sent:** Sunday, June 29, 2014 7:19 PM
**To:** MGCcomments (MGC)
**Subject:** Decision postponement Wynn Proposal

This postponement is not fair to the people of Massachusetts and Everett.The volunteers and residents who have responded to every inquiry and request presented to them and responded in good faith. Now since Boston wasn't named a host city they are looking to derail this whole proposal because they did not get a piece of the 'pie'. I feel we shold continue to approval decision and should not put the whole thing on hold till November then we have to start the whole process again since recent polls show that the majority of the people are in favor of the gambling issue. Please do not pospone this process!

Yours truly,
Bruce A. Priestley
Rhonda I. Priestley
Bryan E. Priestley
143 Glendale Street
Everett, MA 02149

**Bresilla, Colette (MGC)**

**From:** John Vitagliano <seagullconsult@msn.com>
**Sent:** Sunday, June 29, 2014 3:12 PM
**To:** MGCcomments (MGC)
**Subject:** Region A Decision-Boston Motion

Dear Mass. Gaming Commission,

I strongly oppose the June 27th motion of the City of Boston to stay proceedings involving the Category I license applications in Region A and instead urge the Mass. Gaming Commission to proceed expeditiously to award the Region A license based on the extensive amount of data submitted to date by the license applicants. The Boston motion would only needlessly further postpone a Region A license award determination which has already been egregiously delayed to the point of frustrating the intent of the original casino enabling legislation. While the Boston motion to stay the Region A license award fails to demonstrate any harm to the city if the Region A award is awarded prior to the November referendum the dis-benefits of the Boston motion to other cities, towns and the Commonwealth itself are manifest.

The substantial economic benefits which would accrue to the Commonwealth and many host and surrounding communities, including my hometown of Winthrop, attendant on the Region A license should not be held hostage to the whim of any single municipality. I am confident that the Mass. Gaming Commission is fully capable of adjusting it's proceedings to comply with the result of the November referendum.

Thank you.

John Vitagliano
19 Seymour Street
Winthrop, MA 02152

617-846-1105

**Bresilla, Colette (MGC)**

**From:** martoz2 <martoz2@aol.com>
**Sent:** Sunday, June 29, 2014 2:11 PM
**To:** MGCcomments (MGC)

Dear Commissioner and Board,
I sincerly hope that you will come to a decision on giving out the casino license as planned.

The over whelming vote and the time and money spent so that we could creative jobs and bring revenue to our city should not be undone because Mayor of Boston was not able to be the host city. I urge you to do the right thing and continue on as planned.
Thank you.
Marie Tozzi
Everett,MA

Sent from Samsung tablet

**Bresilla, Colette (MGC)**

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**From:** Lisa Lancia <llancia12@gmail.com>
**Sent:** Sunday, June 29, 2014 1:35 PM
**To:** MGCcomments (MGC)

Please stick to plan to allow casinos in Massachusetts

**Bresilla, Colette (MGC)**

**From:** italiansoxgirl25@gmail.com
**Sent:** Sunday, June 29, 2014 12:03 PM
**To:** MGCcomments (MGC)
**Subject:** Casino

This is an undue burden for the volunteers who have worked so hard to bring this project to fruition.

Boston is continually attempting to delay just because they missed their opportunity to be a host community. Now they are standing in the way of jobs and tax relief for Massachusetts tax payers.

We need jobs now. Not a year from now. We have waited long enough.

Boston has been granted enough delays and reconsideration. Don't let them hijack this process again for selfish reasons.

This further delay is unfair for Everett, Revere and surrounding communities that have been working diligently on this long and arduous process for the past two years.

Stick to the plan. Stick with the schedule!

Sincerley,

Christina DelloIacono

Everett Resident

**Bresilla, Colette (MGC)**

**From:** cpmsab@comcast.net
**Sent:** Sunday, June 29, 2014 10:14 AM
**To:** MGCcomments (MGC)
**Subject:** Casinos In MA

I think delaying yet again is completely unfair. Boston will try anything to stop this and its put of hand now. U think the plan should no e forward as scheduled. I as a Everett voter voted a year ago for our city to get a casino and here it is a year later and not everyone one else in the state will get to vote in November? I don't think that is fair. No one else should gabe a say what goes in Everett or revere. Somerville just put a whole new outlet plaza added streets and even a train station and no had a say in what they did so why is this different?

Thank you
Colleen Botte
Sent from my Verizon Wireless 4G LTE Smartphone

**Bresilla, Colette (MGC)**

**From:** Terry Baldwin-Williams <terryb323@gmail.com>
**Sent:** Sunday, June 29, 2014 10:14 AM
**To:** MGCcomments (MGC)
**Subject:** No Delay re Region A Decision!!!

Please, please, please, do NOT allow the Mayor of Boston to once again attempt to bully the Commission to delay your decision regarding the Region A gaming license.

I believe the Commission has done a phenomenal job thus far facing issues one could hardly have imagined would ever arise in this process. However, the City of Boston has tried to impede the Commission's progress on every front.,

Kindly continue to uphold the provisions of the Expanded Gaming Act and the schedule you have devised for issuing the Region A license.

Thank you!

--
~ Terry Baldwin-Williams
323 Main Street - #1
Everett, MA 02149

## Bresilla, Colette (MGC)

**From:** joe tutalo <jtutalo@hotmail.com>
**Sent:** Sunday, June 29, 2014 5:54 AM
**To:** MGCcomments (MGC)
**Subject:** No more delays

We have waited to long it's time you give Mr. Wynn the license no more delays the jobs can't wait . Please move forward it's the best move Mass could make , it's the best project that Mass will ever see and 5000 jobs surly are the best thing that could ever happen in Everett now. Do not stop and wait any longer move move move . You would have to be blind not to see that Wynn is so much the best And this project is amazing . No waiting for the November vote make the right decision now WYNN Sent from my iPhone

**Bresilla, Colette (MGC)**

**From:** leslieenroth mcttelecom.com <leslieenroth@mcttelecom.com>
**Sent:** Friday, June 27, 2014 6:40 PM
**To:** MGCcomments (MGC)
**Subject:** Region A Decision

I urge the commission to keep on working on the Region A Decision. Two applicants have already spent an enormous amount of money. Two towns have worked hard, and in good faith, to persuade you to license a casino in their town. You have worked hard yourselves (I've watched your meetings on my computer ) You have been eminently fair. I am not a lawyer, but in reading the court's decision I see no reason for you to conclude that you must stop now. The law enabling casinos and a slot parlor to be licensed may or may not be repealed. To stop now and wait for the vote would be to assume that the law will be repealed. If it isn't, the applicants in Region A will have been penalized for nothing. If it is, the two applicants and their supporters will have to live with the result. You have said, I believe, that you will reach your decision in September. The city of Boston, or at least the new mayor, has everything to gain if you pause for five months. The applicants have everything to lose. Suffolk Downs will close for the season not knowing whether or not it will open again next year. The fair thing to do is to continue on, as you have, and make the decision you have promised all of us. In September.
Leslie Enroth
leslieenroth@mcttelecom.com

## Bresilla, Colette (MGC)

**From:** Terry Gilchrist <redsoxlovr1@gmail.com>
**Sent:** Friday, June 27, 2014 6:25 PM
**To:** MGCcomments (MGC)
**Subject:** Region A Decision

I have been following the events since it was announced that Casino gambling would be allowed in the State of MA. As a young girl growing up my family was involved with race horses and my dad owned several of them and I would accompany him to the different racetracks to watch him enjoy his greatest passion in life! Unfortunately I lost my dad at the age of 20. He was only 49. As a grown woman I have been working for 28 years in the public sector and for 3 different municipalities! I was thrilled when the legislature approved the casino gambling bill because I knew that it would be a way to help the towns that I work for cope with the never ending battle of trying to fund their budgets. I have been saddened in the last few months with the so called "NIMBY'S that continually talk about the social impact that casino's would bring to the state! I have to wonder whether these people have ever had to struggle to find a job or have to watch the impact of towns and cities laying of employees because they can't find the money to keep them employed. I want to please tell you that you **should not** make the decision to immediately suspend the process of awarding the Region A decision. I believe that the "nay sayers" will lose in their bid to repeal the casino law and that the prospective casino's have worked tirelessly to go through the whole process and have spent millions of dollars of their money to obtain a permit to operate in this State. Furthermore I am tired of spending my hard earned money in another state which I have been forced to do because mine has not built any casino's yet! Thanks for letting me share my views with you!

Terry Gilchrist
9 Miles Ave
Shrewsbury, MA