

2692

EMBARGOED MATERIAL**RECEIVED**

SOUTHEASTERN PENNSYLVANIA
CITIZENS AGAINST GAMBLING
500 E. Lancaster Avenue # 111d
Radnor, PA 19087 610-688-9471

2008 NOV -6 AM 8:18

INDEPENDENT REGULATORY
REVIEW COMMISSION

To:
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

REQUEST FOR DISAPPROVAL OF THE FINAL FORM REGULATION
#2692 - AMENDING SECTIONS OF PART II OF TITLE 58 PA. CODE

WITH

URGENT REQUEST FOR WAIVER OF EMBARGO

To the Commission:

We are writing to respectfully request that the Pennsylvania Gaming Control Board's final form rulemaking that seeks to redefine the definition of Licensed Facility as provided for by the Legislature in 4 Pa.C.S. § 1202, be disapproved.

We request inclusion of this request despite it's submission during the 48 hour blackout, and we respectfully request waiver of the embargo.

We request delivery of this material to the Commission prior to hearing for two reasons. Firstly, 1 Pa.C.S § 303.2 directs in sections b to d : (b) During the blackout period, the Commission will continue to accept comments submitted by agency staff, a member or staff

person of the General Assembly, or a person submitting information at the request of the Commission. Comments submitted by other persons will be embargoed. (c) Upon receipt, the Commission staff will deliver embargoed material and comments received during the blackout period to the agency and the committees. (d) Upon the call to order of the public meeting, embargoed material will be distributed to the Commissioners.

Secondly, we request distribution of our request prior to the hearing by way of alleviation of the embargo due to circumstances of non-negligent delay. Our reasons include the fact that the Pennsylvania Gaming Control Board has not ever posted any notice nor mention of any kind of this matter on their website. Moreso, we have encountered other issues with the Board including failure to accept the parcel containing the fee for our petition for intervention. The transcript of the suitability hearing on Bushkill Group Inc.'s application, held on October 23, 2008 has not been posted, causing us further difficulty in preparing this request. Also in support of this delay are a number of reasons, that are stated in our petition for intervention filed with the Gaming Control Board, one of them based on retaliations and intimidations to James D. Schneller continuing up to present. We believe these circumstances fall within even the high threshold applied to late appeals seen in decisions like C.S. v. Department of Public Welfare, 879 A.2d 1274 (Pa. Commw. Ct. 2005); and H.D. v. Pennsylvania Dept. of Public Welfare, 751 A.2d 1216 (Pa. Commw. Ct. 2000) (appeal permitted due to nonnegligent circumstances related to the petitioner, his or her counsel, or a third party.)

We agree with the requests for disapproval filed subsequent to the submission of the final form in this case and incorporate them herein.

We are certain that these comments would not have affected the decision of the Gaming Control Board proposal and comment stage of these proceedings.

Many of these reasons apply to the application for a Category 3 license by the Fernwood Resort near Bushkill in Middle Smithfield Township, Monroe County. Due to the circumstances, the amended regulation will enable granting of this application, whereas otherwise the 15 mile limit will forbid it.

As the Supreme Court has directed in the Court rules, a rule is discouraged from causing results that are unreasonable or absurd, and the public interest is favored over the private interest. A common sense reading of the law sets the boundary line as the measure, and this is the time tested principle. If any legislator or agency sought to create a buffer zone generally or for specific reasons, they would cause the limit be measured from the property boundary as a matter of common sense and of simplicity in avoiding the further step of measurements within the property at hand.

The Gaming Act as amended, 4 Pa.C.S. § 1101 et seq., governs casinos, racetracks, resorts, and hybrid facilities. Defining a racetrack, gambling and entertainment complex, or a resort, by any boundary other than the property line, is contrived, and erodes public trust, moreso if a

private party is the intended awardee. Already evident in other comments to the Commission are technical questions arising from the proposed amendment that show the proposed amendment to be unnecessary and entangling.

We object that the amended regulation would enable the license applied for by the Fernwood Resort, and the circumstances indicate a prevention by the amendment of the very intent of the rule, namely, that proximity not be permitted to create deleterious effects. Over 200 residents of the East Stroudsburg-Bushkill area presented a petition to the Gaming Control Board, and a principal objection of theirs is a severe and growing traffic problem, that in fact exists also at the casino 15 miles distant, and along the connecting road and certain intersections between the two locations. Bushkill Partners Inc. at the October 23, 2008 suitability hearing before the Gaming Control Board stated that their main counterargument to likely cannibalization by them of Mount Airy's gambling revenue, estimated by them at at least 20%, is multiplication by way of casino-hopping by tourists, between casino and slots parlor. This causes additional traffic, with the alternative being cannibalized revenues, a lose lose situation. Said cannibalization is itself a voluminous figure, that is in conflict with the very regulation that is sought to be amended out of sight.

4 Pa.C.S. § 1102 entitled Legislative Intent, which directs " public policy purposes and . . . objectives of the Commonwealth are to be served by this part:" . . . states in section "(6) The authorization of limited gaming is intended to enhance the further development of the tourism market throughout this Commonwealth, including, but not limited to, year-round recreational and tourism locations in this Commonwealth." Any tourism generated by gambling is claimed to detract in many ways from tourism for the region overall, and traffic and blight, which we claim includes the garish mental presence of gambling, for a majority of visitors, are comfort issues that stand out in visitors' minds when they are making the next years' plans. Furthermore, attractiveness as a year round community, stated in said section, is also a principal objective of the Pocono business community, yet these petitioning citizens, who represent the prevalent opinions of the community, complain universally of deaf ears of their municipal governments to traffic that at times is gridlock and/or outlandishly long jams.

Returning to the basic boundary construction, since the stated intent is to increase resort attendance, then a resort should be measured by it's boundaries, for the fullest intent of the Act to occur.

Other regional markets besides those currently applied for, are intended by the Act overall, including as relating to Category 3 licenses for 500 or fewer slots. Proximity should not even be an issue before the Board, where distribution of licensees throughout the state should have precedence, because saturation causes cannibalization, and wearing down of markets, whereas unoccupied markets are present.

We have claimed in pleadings that grouping of gaming licenses in the Poconos and in any location causes decreased perception of decency among the populace and is degrading to all citizens who consider gambling a vice, who are the majority. Decreased comfort levels are

claimed to be the unavoidable result to all who travel nearby the facilities. Local arrests for drunken driving, public drunkenness, and related acts, are the rule when these facilities open. There is likely a lessening of the stature of the surrounding community and this slight occurs to the community's pride and posterity, that are inherent to the community and to the state and to all citizens. The fifteen mile rule alleviates these side effects, and the rule is a rule of forbiddance, and so should not enjoy an arbitrary re-definition geared at alleviating a party's circumstances. This proximity process is meant to be strictly applied, especially because resorts are numerous in this region. This process offsets and balances the emphasis on haste which is readily inferred from the statute and regulations and decisions to date by the Board.

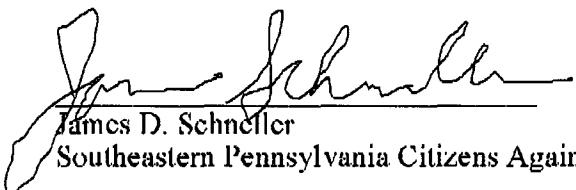
We continue to claim that the Act, and Pennsylvania law overall, direct a duty and authority of the Gaming Control Board to take public safety, comfort, health, and welfare into consideration in their decisions. Thus the intent of the 15 mile rule is believed to inherently include prevention of concentrations of the additional social negatives of gambling, like habituation, bankruptcy, domestic abuse, preying on the elderly, prostitution, local crime, money laundering, and so on.

The circumstances seen here are not special or peculiar. These claims are applicable to all gambling license applications whether in metropolitan, small metropolitan, or rural town center situations.

We respectfully propose that the Gaming Control Board may seek excessive haste in implementing the maximum number of facilities as quickly as possible. A bad faith effort to narrow the Rule could be interpreted as special interest legislation and would most likely be invalid from inception if so proven. The actions of the Gaming Control Board may be partiality or bias. The Act in 4 Pa.C.S. § 1102, entitled Legislative Intent, directs "public policy purposes and . . . objectives of the Commonwealth are to be served by this part: . . . (11) It is necessary to maintain the integrity of the regulatory control and legislative oversight over the operation of slot machines in this Commonwealth; to prevent the actual or appearance of corruption that may result from large campaign contributions; ensure the bipartisan administration of this part; and avoid actions that may erode public confidence in the system of representative government."

We claim that because the Gaming Act contains the directive as to minimum distance between facilities, a similar buffer zone of, at the least, the 15 or 20 miles so directed, wherein no gambling facility could be located, from any state or national park, historical or religious landmark, church, and similar designated features, should be implemented. Reference is made to our requests to the United States Department of the Interior and Congressional committee members, and to the Secretary of the Commonwealth Department of Conservation and Natural Resources Executive Office, copies of which are attached hereto.

For these reasons we request that the proposed amendment be denied.



James D. Schneller
Southeastern Pennsylvania Citizens Against Gambling

Date: November 3, 2008

Copies served on:

All parties who filed comments in this proceeding

Kim Kaufman, Executive Director

Kathy A. Cooper

Michaela Totino

Pennsylvania Gaming Control Board

Pennsylvania Department of Conservation and Natural Resources Executive Office

Honorable Chairman and members of the Pennsylvania House Gaming Oversight Committee

Honorable Chairman and members of the Pennsylvania Senate Community, Economic and Recreational Development Committee

Honorable Chairman and members of the Pennsylvania House Tourism & Recreational

Development Committee

Senator Raphael J. Musto

Senator Patrick M. Browne

Senator Lisa M. Boscola

Senator James J. Rhoades

Senator Robert J. Mellow

Representative John J. Siprotro

Representative Mike Carroll

Representative Mario M. Scavello

Representative Frank Dermody

Representative Michael P. McGeehan

Representative William C. Kortz, II

Representative R. Ted Harhai

Representative Don Walko

Representative Dan Frankel

Representative Jesse White

Representative Matthew Smith

Representative Thomas C. Petrone

National Parks Conservation Association

Commonwealth of Pennsylvania Governing Bodies of Pennsylvania Counties

Commonwealth of Pennsylvania Municipalities and Townships directly affected

Robert P. Krauss Esquire

William Downey Esquire

Greenwood Racing

Ira C. Gubernick Esquire

SOUTHEASTERN PENNSYLVANIA CITIZENS AGAINST GAMBLING

November 4, 2008

Mr. Michael DiBerardinis
Department of Conservation and Natural Resources
7th Floor
Rachel Carson State Office Building
P.O. Box 8767
Harrisburg, PA 17105-8767

Re: Gambling Statutes and Debilitating Effects of Casinos on State Parks and Protected Areas and Their Patrons

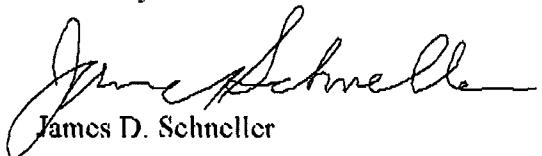
Dear Mr. DiBerardinis:

We are writing to request that your Department request, regulate, and recommend a buffer zone as to all State Parks and all historic sites and protected areas, inside of which no licensed gambling facility may operate.

In lieu of a listing of our reasons for this request, please see the enclosed copy of our similar request made to the U.S. Department of the Interior. We propose that the same fate is threatened to a number of State Parks and related State sites, and that enactment of a buffer zone is a much needed solution.

We appreciate your attention and effort in this issue.

Sincerely



A handwritten signature in black ink, appearing to read "James Schneller".

James D. Schneller

cc: Mr. John Quigley
Pennsylvania Governor Edward G. Rendell
Pennsylvania Gaming Control Board
Honorable Chairman and members of the Pennsylvania House Gaming Oversight Committee
Honorable Chairman and members of the Pennsylvania Senate Community, Economic and
Recreational Development Committee
Honorable Chairman and members of the Pennsylvania House Tourism & Recreational
Development Committee
National Parks Conservation Association
Commonwealth of Pennsylvania Governing Bodies of Pennsylvania Counties
Commonwealth of Pennsylvania Municipalities and Townships directly affected
Robert P. Krauss Esquire
William Downey Esquire
Greenwood Racing
Ira C. Gubernick Esquire

500 East Lancaster Avenue #111d Radnor, PA 19087
noUMgambling@aol.com

SOUTHEASTERN PENNSYLVANIA CITIZENS AGAINST GAMBLING

October 31, 2008

Mr. Dirk Kempthorne
Secretary of the United States Department of the Interior
1849 C Street, N.W.
Washington DC 20240

Honorable Jeff Bingaman
Chairman, United States Senate Committee on Energy and Natural Resources
Honorable Daniel K. Akaka
Chairman, United States Senate Subcommittee on National Parks
304 Dirksen Senate Building
Washington, D.C. 20510

Honorable Nick Rahall
Chairman, United States House of Representatives Committee on Natural Resources
Honorable Raul Grijalva
Chairman, United States House of Representatives Subcommittee on National Parks, Forests,
and Public Lands
1329 Longworth House Office Building
Washington, D.C. 20515

Re: Gambling Facilities Adjacent to National Parks

Dear Mr. Kempthorne and Honorable Chairpersons of the Senate and House Committees :

We are writing you concerning great and permanent ill effects on National Parks in the Commonwealth of Pennsylvania, that will occur by way of licensing of gambling facilities located adjacent to them. We request the Secretary's and Congress's review and resolution of this national issue in the interests of the populace and of our natural and historical heritage.

Southeastern Pennsylvania Citizens Against Gambling is a community organization devoted to the prevention of new gambling facilities, which is a phenomenon that is presently receiving attention regarding various locations in Pennsylvania, subsequent to enabling legislation passed in 2004. We are affiliated with other Pennsylvania and national organizations with whom we

share the same goals. Our mission includes a strong objection to the facilities proposed at locations immediately adjacent to Valley Forge Historical Park, the Delaware Water Gap National Recreation Area, and Independence National Park.

We seek to prevent the placement of any gambling in these locations, for common sense reasons including maintaining a wholesome array of businesses for our citizens, halting of worsening traffic and pollution, setting a responsible example for youth; objections due to unwholesome influences on the community and detriment to our image, and needlessness of gaming facilities where they already exist in our region.

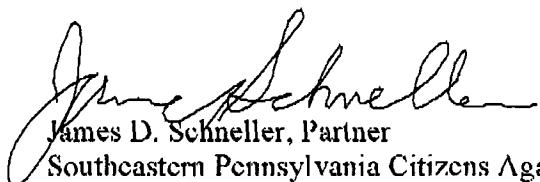
The proposed facilities, as would nearly always be the case, directly impinge upon highly populated and/or highly travelled regions, and each proposal exhibits serious questions as to increased traffic. Numerous additional harms will be detrimental to the Parks including crime, a new level of commuters, increased pollution, prostitution, decreased perception of decency, and decreased comfort levels for all who travel. Local arrests for drunken driving, public drunkenness, and related acts, are the rule when these facilities open. These and the known related harms to the community, associated with gambling, not discussed here, are an affront to those who visit the Historical Parks, in all of their beauty and solemnity.

In each case these harms would directly affect visitors to a National Park, and would be, at the least, readily visible to them. The lessening of the stature of the surrounding community is another noticeable slight, including to the community's pride in the National Park, and posterity, that are inherent to the community and to the state and to all citizens.

A solution is also needed because Pennsylvania overall, as are some other States, is a historical mecca, and as such must remain that way for visitors to National Parks. This historical aspect carries with it the time tested themes of honor and decency. Gambling is incompatible with these, and we believe that the Park Service has the authority to object to these proposals on the basis of use of an adjacent property, which is in two of the cases an adjacent hotel, one of them the principal hotel for Park visitors. These gambling facilities are visible from these parks, but moreso would taint the visitor's historical experience and that of their children. Valley Forge, especially, is a treasured symbol of sacrifice and dying for principles, and for basic rights, and sacrifice. It is the spirit of the forefathers and their army that caused our existence, and this hallowed ground, and that of Independence Park and of all National Parks, must reflect that spirit, and this is in line with the majority of Americans' opinions.

We believe this dilemma to be so determinative of Park visitor's experience, and of citizen and international perception of our nation and the goals of the Department and of the Constitution, that legislation is warranted as the means to preserve the parks and their image. For instance, a gambling-free buffer zone of 50 miles surrounding any National Park or Recreational Area would solve all discretionary decision making. Alternatively a buffer zone designated in a process involving the local municipality, and county or State Historical Commission could be created. Any discouragement of this sort by your promulgation will result in noticeably more enjoyable and meaningful visitor experiences for the majority of

Americans. Please act in any and all ways possible to maintain the aura and themes that make these Parks great.



James D. Schneller, Partner
Southeastern Pennsylvania Citizens Against Gaming

cc: Friends of the Forgotten
Freedom and Honor
Disabled American Veterans
Veterans of Foreign Wars
Vietnam Veterans of America
The American Legion
Honorable Arlen Specter
Honorable Robert Casey
Pennsylvania Governor Edward G. Rendell
Honorable Paul E. Kanjorski
Honorable Robert A. Brady
Honorable Patrick J Murphy
Honorable Chaka Fattah
Honorable Allyson Y. Schwartz
Honorable Joe Sestak
Honorable Jim Gerlach
Members, United States Senate Committee on Energy and Natural Resources
Members, United States Senate Subcommittee on National Parks
Members, United States House of Representatives Committee on Natural Resources
Members, United States House of Representatives Subcommittee on National Parks, Forests, and Public Lands
Mrs. Cynthia MacLeod, Superintendent, Independence National Historical Park
Mr. Michael A. Caldwell, Superintendent, Valley Forge National Historical Park
Mr. John Donahue, Superintendent, Delaware Water Gap NRA
Pennsylvania Gaming Control Board
Honorable Chairman and all members of the Pennsylvania House Gaming Oversight Committee
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National Parks Conservation Association
Commonwealth of Pennsylvania Governing Bodies of Affected Municipalities and Townships
Robert P. Krauss Esquire
William Downey Esquire
Greenwood Racing

Name: James D. Schneller
Company:
Voice Number: 610-688-9471
Fax Number: 610-688-9471
500 East Lancaster Avenue #111d
Radnor, PA 19087

Fax

Date: Thursday, November 06, 2008

Total Pages: 11

Subject: URGENT -- SUBMISSION FOR HEARING

Name: Mr. Kim Kaufman, Mrs Kathy A. Cooper

Company: Independent Regulatory Review Commission

Voice Number:

Fax Number: (717) 783-2664.

Note:

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INDEPENDENT REGULATORY
REVIEW COMMISSION