



Massachusetts Supreme Judicial Court Allows Ballot Question on Gaming Repeal to Proceed

In a widely anticipated ruling, the Supreme Judicial Court of Massachusetts (SJC), the State's highest court, issued a unanimous decision on June 24, 2014 requiring the Attorney General to certify for the November ballot a petition seeking to prohibit casino and slots gambling and abolish pari-mutuel wagering on simulcast greyhound races in Massachusetts, thereby overturning a previous determination by the Attorney General. As a result of the ruling, and despite substantial investment by the gaming industry, voters in Massachusetts will have the opportunity to undo all gaming initiatives undertaken by the Commonwealth since 2011.

Background

In November 2011, after years of debate and negotiation in the Legislature, the Expanded Gaming Act (Chapter 23K of the General Laws of the Commonwealth) was enacted and authorized a limited number of casino and slot licenses to be issued by the newly formed Massachusetts Gaming Commission (MGC). In accordance with the later amended Article 48 of the Amendments to the Massachusetts Constitution, 10 qualified voters signed and submitted to the Attorney General for review an initiative petition seeking to ban casino and slots gambling legalized through Chapter 23K and abolish pari-mutuel wagering on simulcast greyhound races. In a letter dated September 4, 2013, the Attorney General declined to certify the petition, determining that although a gaming license applicant does not have an implied contractual right to a gaming license, the applicant does have an implied contractual right to a licensure decision by the MGC. Because a license applicant would be denied a contractual right, implied or otherwise, the Attorney General determined that the petition, if approved, would result in a taking and, therefore, pursuant to an explicit exclusion, could not be the subject of a petition brought under Article 48.

Subsequently, the petition's supporters challenged the Attorney General's determination, which was heard by the SJC.

Decision

On June 24, 2014, the SJC overturned the Attorney General's determination and required the Attorney General to certify the petition to appear on the November ballot. The unanimous decision by the Court rejects the various rationales presented by the Attorney General and a group of pro-gaming interveners. First, the Court rejected an argument by the interveners that the gaming license itself constituted property that cannot be taken by the Commonwealth without just compensation. The Court stated that this argument is inconsistent with the long-standing principle that the Legislature does not surrender its broad authority to regulate matters within its core police power unless expressly stated to the contrary. As a result, the Court found that under the core police power, the voters, through the initiative process, may choose to abolish casino and slots gambling and that doing so would not be a taking. The Court went on to state that "the possibility of abolition is one 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."

Additionally, the Court ruled that in the case of operating casinos, the Attorney General incorrectly determined that, by precluding a determination on a license application, the ballot initiative resulted in a taking. Instead, the Court reasoned that the process and the outcome were rationally linked and that if a licensee does not hold an interest in a license, an applicant does not hold an interest in the application process. Further, the Court held that the ballot question would not violate the local matters exclusion within the Constitution and that the petition satisfied the relatedness requirement of article 48. The Court also found that the subjects of the petition were related and that the Attorney General's summary of the petition was "fair," thereby rejecting each of the challenges raised by the interveners. The Court refused to address the unripe issue of whether the petition achieved the aims of the petitioners, noting that the matter may eventually be before the court should the ballot initiative pass.

Conclusion

With this decision, the petition will proceed to the ballot in November and leave the future of casino, slot, and pari-mutuel greyhound gambling in the hands of Massachusetts voters. This question will undoubtedly attract considerable attention, energy, and money during the campaign season this summer and fall. Furthermore, it will be worth watching how the MGC addresses the ongoing license process for casino operators in regions A and C and vendors in the midst of an active ballot campaign. We will continue to monitor this situation and the ramifications felt throughout the East Coast gaming industry very closely as events continue to unfold.

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