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Pennsylvania Residents Are Without Standing to
Challenge Both the Gaming Board's Grant of Casino
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Gaming Act: *Society Hill Civic Association v.*
Pennsylvania Gaming Control Board

PENNSYLVANIA CIVIL PROCEDURE — STANDING —
ADMINISTRATIVE LAW — PENNSYLVANIA RACE HORSE
DEVELOPMENT AND GAMING ACT — The Supreme Court of Penn-
sylvania denied residents' petition for review of the grant of casino
licenses for lack of standing because petitioners failed to pursue
intervention to achieve party status and were not aggrieved.

Soc'y Hill Civic Ass'n v. Pa. Gaming Control Bd., 928 A.2d 175
(Pa. 2007).

On February 1, 2007, the Pennsylvania Gaming Control Board (Gaming Board) granted conditional slot licenses to two casinos in the City of Philadelphia—Foxwoods Casino (Foxwoods) and HSP Gambling, L.P. (HSP).¹ Petitioners, four individuals and four civic associations located in Philadelphia (collectively, Society Hill), appealed directly to the Supreme Court of Pennsylvania, challenging the Gaming Board's grant of the slot licenses.² Additionally, Society Hill questioned the constitutionality of section 1204 of the Pennsylvania Race Horse Development and Gaming Act (Gaming Act).³

1. *Soc'y Hill Civic Ass'n v. Pa. Gaming Control Bd.*, 928 A.2d 175 (Pa. 2007). On July 5, 2004, Pennsylvania Governor Edward G. Rendell signed legislation creating the Pennsylvania Race Horse Development and Gaming Act. *Bedford Downs Mgmt. Corp. v. State Harness Racing Comm'n*, 926 A.2d 908 (Pa. 2007). See Pennsylvania Race Horse Development and Gaming Act, 4 PA. CONS. STAT. ANN. §§ 1101-1904 (West 2008). The Gaming Act authorized a limited number of slot machine licenses to be distributed throughout the state. *Bedford*, 926 A.2d 908. The Gaming Act also formed the Pennsylvania Gaming Control Board, which determines those applicants who receive licenses, holds public hearings, and regulates the disbursement of revenues generated by the casinos. *Id.*

2. *Soc'y Hill*, 928 A.2d at 178. Individual petitioners were Paul Neuwirth, Rita Gaudet de Vecchis, Barbara Seiple, and Kathleen McGrann. *Id.* at 179 n.3. The civic association petitioners were the Society Hill Association, Queen Village Neighbors Association, Pennsport Civic Association, and Whitman Council, Inc. *Id.*

3. *Id.* at 183.

HSP intervened⁴ and filed an application for summary relief, which was joined by Foxwoods and the Gaming Board, alleging that Society Hill lacked standing⁵ to appeal the Gaming Board's decision.⁶ The Court directed the parties to submit briefs regarding the following issues: (1) whether section 1204 of the Gaming Act conferred on Society Hill standing to appeal the Gaming Board's decision in contemplation of the court's recent decision in *Citizens Against Gambling Subsidiaries, Inc. v. Pennsylvania Gaming Control Board*;⁷ and (2) whether Society Hill had standing to challenge the constitutionality of section 1204 of the Gaming Act.⁸

Initially, the court noted its jurisdiction over Society Hill's appeal, pursuant to section 1204 of the Gaming Act, which vested the Supreme Court of Pennsylvania with original jurisdiction to hear any appeal,⁹ decision, or other determination involving slot machine licenses in the State.¹⁰

Society Hill asserted sufficient standing to appeal by relying on section 702 of the Administrative Agency Law,¹¹ which grants a person who has been aggrieved by an adjudication of a Commonwealth agency the right to appeal, providing that that person has

4. Intervention is the "entry into a lawsuit by a third party who, despite not being named a party to the action, has a personal stake in the outcome." BLACK'S LAW DICTIONARY 840 (8th ed. 2004).

5. Standing is generally defined as "a party's right to make a legal claim or seek judicial enforcement of a duty or right." *Id.* at 1442.

6. *Soc'y Hill*, 928 A.2d at 177 (finding that petitioner's reliance on taxpayer status alone was insufficient to grant standing since this injury was the same as experienced by the rest of society).

7. 916 A.2d 624 (Pa. 2007).

8. *Soc'y Hill*, 928 A.2d at 177.

9. *Id.* at 178-79. Section 1204 provides:

The Supreme Court of Pennsylvania shall be vested with exclusive appellate jurisdiction to consider appeals of any final order, determination or decision of the board involving the approval, issuance, denial or conditioning of a slot machine license. Notwithstanding the provisions of 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action) and 42 Pa.C.S. § 763 (relating to direct appeals from government agencies), the Supreme Court shall affirm all final orders, determinations or decisions of the board involving the approval, issuance, denial or conditioning of a slot machine license unless it shall find that the board committed an error of law or that the order, determination or decision of the board was arbitrary and there was a capricious disregard of the evidence.

4 PA. CONS. STAT. ANN. § 1204 (West 2008).

10. *Soc'y Hill*, 928 A.2d at 177-78.

11. The Pennsylvania Administrative Agency Law, 2 PA. CONS. STAT. ANN. § 702 (West 2008), provides that: "[a]ny person aggrieved by an adjudication of a Commonwealth agency who has a direct interest in such adjudication shall have the right to appeal therefrom to the court vested with jurisdiction of such appeals by or pursuant to Title 42 [relating to judiciary and judicial procedure]."

a direct interest in the matter.¹² Society Hill argued that section 702 applied to all Commonwealth agencies, including the Pennsylvania Gaming and Control Board; moreover, due to the silence of the Gaming Act with respect to controverting the Administrative Agency Law, section 702 controlled.¹³

Society Hill alleged a direct, substantial, and immediate interest in the Gaming Board's decision.¹⁴ Specifically, Society Hill claimed the byproducts of the casinos would have lowered Society Hill's property values.¹⁵ Further, Society Hill alleged that the casinos would cause local businesses to fail, historic preservation efforts to cease, and new development to be halted.¹⁶ The civic association petitioners asserted standing because they represented the residents, who resided near the proposed casinos' location.¹⁷ The civic association petitioners participated in the proceedings before the Gaming Board, where they testified regarding negative effects that would result due to HSP and Foxwoods' casinos.¹⁸

The majority, writing per curiam,¹⁹ began by reexamining its recent decision in *Citizens*.²⁰ In *Citizens*, the respondent casino and Gaming Board intervened and filed a motion for summary relief alleging that petitioners lacked standing.²¹ In *Citizens*, the Pennsylvania Supreme Court held that petitioners lacked standing, and dismissed their petition for review, because petitioners failed to intervene in prior proceedings.²² Additionally, the court did not find persuasive petitioners' argument that they had a di-

12. *Soc'y Hill*, 928 A.2d at 179-80.

13. *Id.* at 180.

14. *Id.* at 179.

15. *Id.* Such byproducts include increased noise, crime, disruptions in family life, disruptions by compulsive gamblers, suicides, and higher divorce rates. *Id.*

16. *Id.*

17. *Soc'y Hill*, 928 A.2d at 179.

18. *Id.*

19. Per curiam means the court is writing the opinion "as a whole." BLACK'S LAW DICTIONARY 1676 (8th ed. 2004).

20. *Soc'y Hill*, 928 A.2d at 180 (citing *Citizens Against Gambling Subsidies v. Pa. Gambling Control Bd.*, 916 A.2d 624 (Pa. 2007)). *Citizens*, decided just months prior, involved a direct appeal by a Pennsylvania citizen and an organization, challenging both the grant of the slot machine license, and the constitutionality of section 1204 of the Gaming Act. *Id.*

21. *Id.* (citing *Citizens*, 916 A.2d at 624 (Pa. 2007)).

22. *Id.* The court stated, "[w]e agree with the Board and Intervenor that permitting an appeal based on taxpayer standing alone absent intervention in the administrative proceedings is inconsistent with orderly rules of procedure and would foster untenable impracticalities in terms of the development of an essential record for consideration on appeal." *Id.*

rect interest in the Gaming Board's decision because, inter alia, petitioners relied solely on taxpayer status.²³

In the present matter, Society Hill argued that *Citizens* was distinguishable because, unlike the plaintiffs in *Citizens*, Society Hill had more than mere taxpayer standing.²⁴ Additionally, Society Hill contended that their close proximity to the casino sites afforded them a more direct interest than the interest of the plaintiffs in *Citizens*.²⁵ The Gaming Board countered by arguing the same position that was taken previously in *Citizens*—that, although Society Hill participated in the pre-licensure hearings, their failure to formally object resulted in a lack of standing to appeal.²⁶ Additionally, the Gaming Board argued that Society Hill erred in relying on section 702 because, under the Gaming Board's interpretation, direct appeals of such a nature are exclusively governed by section 1204.²⁷ To support its argument, the Gaming Board relied on the language in section 1204 of the Gaming Act, which it contended expressly conflicted with and superceded section 702 of the Administrative Agency Law.²⁸

Ultimately, the majority determined that section 702 of the Administrative Agency Law did not apply to appeals of the Gaming Board's decisions.²⁹ By examining the statute's construction, the court reasoned that section 702 applied only to appeals under Title 42.³⁰ Society Hill based its claim on section 1204.³¹ Pursuant to section 1204, which controlled, party status was required to have standing to appeal.³² Because it failed to intervene in the initial proceedings, Society Hill did not achieve party status.³³

23. *Id.* at 180-81. There can generally be state taxpayer standing, but not federal. See *Flast v. Cohen*, 392 U.S. 83 (1968).

24. *Soc'y Hill*, 928 A.2d at 181. The majority opined, "[p]etitioners [also] maintain that they were unaware of the intervention procedures set forth at 58 Pa. Code 441.19(y) and that their failure to intervene was not a strategic tactic as occurred in *Citizens*." *Id.*

25. *Id.*

26. *Id.* at 181-82.

27. *Id.*

28. *Id.* at 182.

29. *Soc'y Hill*, 928 A.2d at 182.

30. *Id.* Title 42 deals with judicial and judicial procedure.

31. *Id.* at 179. The majority noted, however, that they were not adopting the Gaming Board's argument that section 1204 of the Gaming Act superceded section 702 of the Administrative Agency Law, but rather that section 702 did not apply because of the language of the Act. *Id.* at 183 n.8.

32. *Id.* at 182-83.

33. *Id.* at 183. The court went on to reject petitioners' claim that they did not have to satisfy the procedural requirements to make a timely intervention to qualify for party status because petitioners were unaware of it. *Id.*

Next, the majority examined the procedures used by the Gaming Board in entertaining objections by concerned parties.³⁴ They found that allowing a person to appeal, absent a prior formal objection, would be impractical and frustrate the licensing process as a whole.³⁵

The court then addressed the constitutionality of section 1204 of the Gaming Act.³⁶ Specifically, Society Hill alleged that section 1204 denied the Pennsylvania Supreme Court the power to review individual agency action, which they contended violated article V, section 2 of the Pennsylvania Constitution.³⁷ Society Hill was required to show that the Gaming Board's decision caused them to be aggrieved in a way that was substantial, direct, and immediate.³⁸ In addition, Society Hill argued that they had been aggrieved solely by the standard of review set forth in section 1204.³⁹ However, the majority did not find that the standard of review, on its own, was enough to justify a substantial, direct, and immediate interest.⁴⁰ Accordingly, since the court did not find Society Hill was injured by any provision of section 1204, their interest was not sufficient to justify standing.⁴¹

Finding that Society Hill lacked standing to appeal both the Gaming Board's decision and the constitutionality of section 1204

34. *Soc'y Hill*, 928 A.2d at 183.

35. *Id.* The court further explained, "[w]e emphasize that the regulations promulgated by the Board provide an adequate opportunity for a person to achieve party status through intervention if the person has an interest in the proceeding which is substantial, direct, and immediate and if the interest is not adequately represented in a licensing hearing." *Id.*

36. *Id.*

37. *Id.* at 184. The Pennsylvania Constitution, article V, section 2 provides:

The Supreme Court:

- (a) shall be the highest court of the Commonwealth and in this court shall be reposed the supreme judicial power of the Commonwealth;
- (b) shall consist of seven justices, one of whom shall be the chief justice; and
- (c) shall have such jurisdiction as shall be provided by law.

PA. CONST. art. V, § 2.

38. *Soc'y Hill*, 928 A.2d at 184. The Pennsylvania Supreme Court stated that an interest is substantial "if it is an interest in the resolution of the challenge which surpasses the common interest of all citizens in procuring obedience to the law." *Id.* (citing *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003)). Furthermore, "a 'direct' interest mandates a showing that the matter complained of 'caused harm to the parties interested', *id.*, *i.e.*, a causal connection between the harm and the violation of law." *Soc'y Hill*, 928 A.2d at 184 (citing *City of Philadelphia v. Commonwealth*, 838 A.2d 566, 577 (Pa. 2003)). Finally "an interest is immediate if the causal connection is not remote or speculative." *Soc'y Hill*, 928 A.2d at 184 (citing *Philadelphia*, 838 A.2d at 577 (Pa. 2003)).

39. *Soc'y Hill*, 928 A.2d at 184.

40. *Id.*

41. *Id.*

of the Gaming Act, the court dismissed Society Hill's petition and granted the Gaming Board's motion for summary relief.⁴²

Justice Saylor wrote a dissenting opinion.⁴³ Justice Saylor objected to the majority's decision that section 702 of the Administrative Agency Law did not apply.⁴⁴ Under his analysis, section 702 would apply to petitioners' case because Saylor disagreed that the language in section 1204 of the Gaming Act usurped or superceded any language in section 702.⁴⁵ Accordingly, Justice Saylor felt Society Hill was not required to have party status in order to appeal the Gaming Board's decision.⁴⁶ Rather, Justice Saylor relied on *Application of El Rancho Grande, Inc.*,⁴⁷ in which the court found that party status was not required under section 702 to support an appeal of an administrative agency's decision, so long as the petitioner had a direct interest.⁴⁸

In addition, Justice Saylor suggested that certain evidence shown by Society Hill, especially their close proximity to the proposed casinos, may have been enough to afford them a direct interest in the matter.⁴⁹ At a minimum, Justice Saylor felt Society Hill should have been entitled to a factual determination regarding their level of direct interest.⁵⁰

While the origins of the standing doctrine have always been unclear, they seem to have originated in the common-law writ system.⁵¹ Where a person's cause of action was confined to a particular writ, there was no need to discuss issues of standing.⁵² Gradually, however, as the writ system was abandoned, those who wished to challenge decisions of legislative bodies were required to

42. *Id.* at 184-85.

43. *Id.* at 185 (Saylor, J., dissenting). He was joined by Justice Castille. *Id.*

44. *Soc'y Hill*, 928 A.2d at 185 (Saylor, J., dissenting).

45. *Id.* at 185. Specifically, Justice Saylor stated:

Section 1204 of the Gaming Act, which invests this Court with original and exclusive appellate jurisdiction relative to appeals pertaining to the issuance of gaming licenses, supplants only the contrary portion of Section 702 which provides for appeals to the court having jurisdiction pursuant to the Judicial Code, 42 Pa.C.S. Title 42. *See* 4 Pa.C.S. § 1204.

Id.

46. *Id.* at 186.

47. 437 A.2d 1150 (Pa. 1981) (holding that petitioners had standing to challenge the Pennsylvania Liquor Control Board's grant of a liquor license to a competitor by alleging a direct interest in the matter which was both substantial and particular to petitioners alone).

48. *Soc'y Hill*, 928 A.2d at 186 (Saylor, J., dissenting).

49. *Id.*

50. *Id.*

51. JOSEPH VINING, LEGAL IDENTITY: THE COMING OF AGE OF PUBLIC LAW 55 (1978).

52. *Id.*

show that their personal interests were “directly and specially affected.”⁵³ Under modern American legal practice, standing emerges, theoretically, from Article III of the United States Constitution, which restricts federal judicial power to “cases” and “controversies.”⁵⁴

In 1968, the United States Supreme Court attempted to define the standing doctrine in *Flast v. Cohen*.⁵⁵ In *Flast*, the Court granted standing⁵⁶ to petitioners to challenge the Government’s funding of certain parochial schools, based solely on petitioners’ status as taxpayers.⁵⁷ By 1970, the United States Supreme Court, in *Association of Data Processing Service Organizations, Inc. v. Camp*,⁵⁸ reformulated standing, settling decades of vagueness among the circuits.⁵⁹ The Court addressed whether petitioners, a group of data processing companies, had standing to challenge a ruling by the Comptroller of the Currency, which they alleged would detrimentally affect their economic interests.⁶⁰ Ultimately, *Data Processing* adopted a two-part requirement known as the “injury-in-fact” test.⁶¹ First, the plaintiff must assert an injury-in-fact, which is economic or otherwise.⁶² Second, the plaintiff must show that his injury was within the zone of interests sought to be protected or regulated by the statute or constitutional guarantee in question.⁶³ Ultimately, the Court granted standing to petition-

53. *Id.*

54. *Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, Inc.*, 454 U.S. 464 (1982). *See also* U.S. CONST. art. III, § 2, cl. 1.

55. 392 U.S. 83. In *Flast*, petitioner argued that certain expenditures of federal funds made under the Elementary and Secondary Education Act of 1965 to parochial schools were in violation of the Establishment and Free Exercise Clauses of the First Amendment. *Flast*, 392 U.S. at 83.

56. *Flast*, 392 U.S. at 99. The United States Supreme Court stated:

The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated. The “gist of the question of standing” is whether the party seeking relief has “alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues.”

Id. (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

57. *Flast*, 392 U.S. 83.

58. 397 U.S. 150 (1970).

59. *Data Processing*, 397 U.S. at 150.

60. *Id.* at 152. Petitioners specifically alleged that the ruling by the Comptroller of the Currency would allow national banks to make data processing services (in addition to their normal banking services) available to other banks and bank customers. Petitioners claimed that the increased data processing competition would result in a loss of profits. *Id.*

61. *Id.* at 152-53.

62. *Id.* at 152.

63. *Id.* at 153.

ers after a showing that their loss of business due to the Comptroller's action constituted an economic injury-in-fact.⁶⁴

In Pennsylvania, the supreme court has adopted a doctrine of standing⁶⁵ which differs slightly from the federal version.⁶⁶ Compared to the more rigid federal requirements, modern decisions by the court have described Pennsylvania's standing requirements as flexible.⁶⁷ In the 1970s, after the Supreme Court of Pennsylvania sat dormant for many years on the issue, the court decided *William Penn Parking Garage v. City of Pittsburgh*,⁶⁸ in which it liberally expanded the class of interests from which an "aggrieved"⁶⁹ person could claim standing.⁷⁰ In *William Penn*, several parking lot operators, as well as fifty individual taxpayers, challenged a tax passed by the City of Pittsburgh, imposing a twenty-percent tax on all non-residential parking places.⁷¹ The court established a two-part test in order for a plaintiff to have standing.⁷² First, the plaintiff must allege an interest which is substantial and direct.⁷³ Second, the plaintiff must illustrate a causal connection

64. *Data Processing*, 397 U.S. at 152.

65. See *In re Application of Family Style Restaurant, Inc.*, 468 A.2d 1088 (Pa. 1983); *In re Application of El Rancho Grande, Inc.*, 437 A.2d 1150 (Pa. 1981); *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269 (Pa. 1975).

66. In *Erfer v. Commonwealth*, 794 A.2d 325 (Pa. 2002), the Supreme Court of Pennsylvania explained:

The U.S. Supreme Court has unequivocally declared that "state courts are not bound to adhere to federal standing requirements . . ." (*ASARCO Inc. v. Kadish*, 490 U.S. 605 (1989)). The high Court recognized that in resolving issues of standing, state courts are not constrained by the dictates of Article III of the United States Constitution.

Erfer, 794 A.2d at 329.

67. *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003). The Supreme Court of Pennsylvania stated: "[o]ur Commonwealth's standing doctrine is not a senseless restriction on the utilization of judicial resources; rather, it is a prudential, judicially-created tool meant to winnow out those matters in which the litigants have no direct interest in pursuing the matter." *Hickson*, 821 A.2d at 1243.

68. 346 A.2d 269 (Pa. 1975).

69. *William Penn*, 346 A.2d at 280. Traditionally, the word "aggrieved" had been defined in Pennsylvania by the case of *Lansdowne Board of Adjustments Appeal*, 170 A. 867 (Pa. 1934), requiring a person to not only have a direct interest in the matter challenged, but also possess an interest which is immediate and pecuniary. *Lansdowne*, 170 A. at 868.

70. *William Penn*, 346 A.2d 269.

71. *Id.* at 275. This tax was popularly known as the "Tax Anything Act" due to the Act's broad grant of discretion to levy taxes. *Id.* at 275 n.1.

72. *Id.* at 281-83.

73. *Id.* at 282. The court stated:

The requirement of a "substantial" interest simply means that the individual's interest must have substance—there must be some discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law. . . . The requirement that an interest be "direct" simply means that the person claiming to be aggrieved must show causation of the harm to his interest by the matter of which he complains.

between the injury and the judgment being challenged, that is immediate, and not a remote consequence of the judgment.⁷⁴ In addition, *William Penn* added the requirement of an injury to a "pecuniary" interest, although it expressly refused to establish a threshold amount.⁷⁵

In 1979, the Pennsylvania Supreme Court decided *Application of Biester*,⁷⁶ in which it recognized a limited exception to the two-part standing test articulated in *William Penn*, allowing taxpayer status as grounds for standing where a person has been aggrieved, but their interests do not otherwise satisfy the traditional requirements.⁷⁷ In *Biester*, the court examined whether an individual who filed an application to intervene based on taxpayer status alone had standing to challenge the Act.⁷⁸ The court, while ultimately denying petitioner's application, stated that in recognition of certain policy considerations, standing based on taxpayer status alone could be granted where certain governmental actions would otherwise go unchallenged, or where judicial review would not otherwise occur.⁷⁹ Subsequent case law established five specific requirements as prerequisites to establishing standing under the *Biester*-taxpayer exception.⁸⁰

With the passage of several amendments to the Administrative Agency Laws and Local Agency Laws in 1978, several cases arose in which the parties alleged standing, not on the basis of the traditional common-law formulations alone, but pursuant to the statu-

Id.

74. *Id.* at 283. "As in the case of 'substantial' and 'pecuniary,' these two requirements reflect a single concern. Here that concern is with the nature of the causal connection between the action complained of and the injury to the person challenging it." *Id.*

75. *William Penn*, 346 A.2d at 281-82. The "pecuniary interest" requirement has been subsequently abandoned in Pennsylvania. See *Viechec v. Zoning Hearing Bd.*, 676 A.2d 1317 (Pa. Commw. Ct. 1996); *Appeal of Hanover*, 608 A.2d 607 (Pa. Commw. Ct. 1992); *In re Francis Edward McGillick Found.*, 594 A.2d 322 (Pa. Super. Ct. 1991).

76. 409 A.2d 848 (Pa. 1979).

77. *Biester*, 409 A.2d at 852.

78. *Id.* at 850.

79. *Id.* at 852.

80. In *Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655 (Pa. 2005), the Supreme Court of Pennsylvania summarized the five requirements:

- (1) the governmental action would otherwise go unchallenged;
- (2) those directly and immediately affected by the complained of matter are beneficially affected and not inclined to challenge the action;
- (3) judicial relief is appropriate;
- (4) redress through other channels is unavailable; and
- (5) no other persons are better situated to assert the claim.

Pittsburgh Palisades, 888 A.2d at 662 (citing *Consumer Party of Pa. v. Commonwealth*, 508 A.2d 323, 329 (Pa. 1985)).

tory Administrative Agency or Local Agency Laws.⁸¹ Under these laws, any person aggrieved by an adjudication of a Commonwealth⁸² or local agency⁸³ has standing to appeal therefrom, provided that they also have a direct interest in the matter.⁸⁴

In *Application of El Rancho Grande, Inc.*, the court examined whether a petitioner, who conceded the inability to appeal in the court of common pleas under the Liquor Code, would nonetheless have standing under section 702 of the Administrative Agency Law.⁸⁵ The court found that, although the Liquor Code prohibited petitioners' appeal, petitioners illustrated an injury which was substantial, direct, and unique.⁸⁶ As a result, petitioners had statutory standing, regardless of the restrictive language of the Liquor Code.⁸⁷ Also, in *Application of El Rancho Grande*, the Pennsylvania Supreme Court rejected another requirement of federal standing law previously established in *Data Processing*, holding that a person had standing to appeal even if he did not belong to the limited class of persons identified by the law in question.⁸⁸

In *Application of Family Style Restaurant, Inc.*,⁸⁹ the court addressed standing in the context of future economic injury.⁹⁰ Relying heavily on *Application of El Rancho Grande, Inc.*, the court determined that petitioners were not "aggrieved" within the meaning of Administrative Agency Law or Pennsylvania case law by alleging future injuries, which petitioners could not prove.⁹¹

81. See *Citizens Against Gambling Subsidies, Inc. v. Pa. Gaming Control Bd.*, 916 A.2d 624 (Pa. 2007); *Maritime Mgmt. Inc. v. Pa. Liquor Control Bd.*, 611 A.2d 202 (Pa. 1992); *In re Application of Family Style*, 468 A.2d 1088 (Pa. 1983); *Application of El Rancho Grande, Inc.*, 437 A.2d 1150 (Pa. 1981).

82. 2 PA. CONS. STAT. ANN. § 702 (West 2008).

83. *Id.* § 752.

84. *Id.* § 702.

85. *El Rancho Grande*, 437 A.2d at 1152.

86. *Id.* at 1153.

87. *Id.* at 1151. Section 464 of the Liquor Code provides in pertinent part:

Any applicant who has appeared at any hearing, as above provided, who is aggrieved by the refusal of the board to issue any such license or to renew or transfer any such license may appeal, or any church, hospital, charitable institution, school or public playground located within three hundred feet of the premises applied for, aggrieved by the action of the board in granting the issuance of any such license or the transfer of any such license, may take an appeal limited to the question of such grievance, within twenty days from date of refusal or grant

47 PA. STAT. ANN. § 4-464 (West Supp. 2008).

88. *El Rancho Grande*, 437 A.2d 1150, *appeal after remand*, 467 A.2d 857 (Pa. 1988).

89. 468 A.2d 1088 (Pa. 1983).

90. *Family Style*, 468 A.2d at 1088-90.

91. *Id.* at 1090-91.

In *Pennsylvania Game Commission v. Department of Environmental Resources*,⁹² the court addressed whether the Game Commission, a Commonwealth agency, had standing to challenge a decision of a sister agency⁹³ under the authority of the Game and Wildlife Code.⁹⁴ The court reiterated that only those who are adversely affected by an agency's action and who possess a direct interest in the matter have standing.⁹⁵ The majority found that the Commission's interest was so great that it sufficiently achieved standing.⁹⁶ Yet, the court stated that the particular language of the statute granted the Commission standing; thus the Commission could allege standing under existing case law or the specific statute.⁹⁷

In the context of Pennsylvania casino gaming, there have been several challenges involving standing.⁹⁸ In a case decided just months prior to *Society Hill*, the Supreme Court of Pennsylvania examined whether an individual's status as both a taxpayer and a property owner gave him standing to challenge the Pennsylvania Gaming Control Board's grant of a particular casino license.⁹⁹ *Citizens v. Pennsylvania Gaming Board*, which was significantly relied upon in *Society Hill*, dealt with standing under the Administrative Agency Law, rather than under traditional formulations.¹⁰⁰ In *Citizens*, when denying the petitioner standing based on taxpayer status, the court stated that the "direct" requirement under the Administrative Agency Law, while not technically the same as traditional standing requirements, retained the notion that a petitioner's interest must be one that is unique from the interest common to society as whole.¹⁰¹

92. 555 A.2d 812 (Pa. 1989).

93. *Game Comm'n*, 555 A.2d at 813. The Pennsylvania Game Commission sued the Pennsylvania Department of Environmental Resources. *Id.*

94. *Id.* at 816.

95. *Id.* at 815.

96. *Id.* at 816.

97. *Id.* Although several courts held that since the Administrative Agency Laws require only a "direct" interest in the adjudication, the appellant need not also have an interest that is immediate and substantial. See *Pa. Auto. Ass'n v. State Bd. of Vehicle Mfrs., Dealers and Salespersons*, 550 A.2d 1041 (Pa. Commw. Ct. 1988); *Beers v. Commw. Unemployment Comp. Bd. of Review*, 546 A.2d 1260 (Pa. Commw. Ct. 1988).

98. See *Citizens Against Gambling Subsidies, Inc. v. Pa. Gaming Control Bd.*, 916 A.2d 624 (Pa. 2007); *Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655 (Pa. 2005); *Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth*, 877 A.2d 383 (Pa. 2005).

99. *Citizens*, 916 A.2d 624.

100. *Id.* at 625-26.

101. *Id.* at 628.

The Pennsylvania Gaming Act created a limited number of slot licenses but attracted numerous applicants.¹⁰² Not only did the Act invite competition among potential casino companies, but it also fostered a breeding ground for challenges and appeals from discontented citizens and civic groups. Pennsylvania courts have answered issues of standing, as the courts attempt to distinguish those who have been genuinely aggrieved from those seeking to assert political or social interests. Facially a straight-forward issue, standing has frustrated both courts and litigants for decades.¹⁰³ Consequently, the seemingly polar views adopted by the majority and Justice Saylor in *Society Hill* should not be surprising, considering the inconsistent evolution of both the federal and Pennsylvania standing requirements.

In an ideal system, when courts made decisions regarding standing, their determination would have no relation to the substantive merits of the plaintiff's underlying allegations. Unfortunately, the ideal judicial system, free from any and all political influences, does not exist in the practical world. As the gatekeepers to the judicial system, judges govern their own province, through determinations of standing—deciding *who* should be allowed access to challenge *which* laws. Accordingly, it would not be a significant breakthrough to question whether politics influences judges when standing matters are raised.

Modern standing law appears to find itself closer to being a part of the political system than a part of the legal system.¹⁰⁴ The highly politicized nature of casino gaming in Pennsylvania raises the question of whether the majority in *Society Hill* was influenced by politics or law. People will inevitably wonder if there was more to this decision than just black letter law. Many in the public realm question whether judges have been influenced by ulterior motives—from local level courts, to the United States Supreme Court.¹⁰⁵ The relevancy of this question is further complicated when one considers that the doctrine of standing in Pennsylvania is almost entirely created by the judiciary, contrasted with federal standing requirements which find their roots in the

102. Robert P. Krauss, *Pennsylvania Bar Institute Gaming Law Update*, PA. B. INST. 1 (2006).

103. Kevin A. Coyle, *Standing of Third Parties to Challenge Administrative Agency Actions*, 76 CAL. L. REV. 1061 (1988).

104. Richard J. Pierce, Jr., *Is Standing Law or Politics?*, 77 N.C. L. REV. 1741, 1787 (1999).

105. *Id.* at 1741.

United States Constitution.¹⁰⁶ The politically charged atmosphere in Pennsylvania, combined with the capricious history of standing, legitimizes the question.

In its analysis, the majority expressed a concern about the “time-sensitive nature” of implementing the Gaming Act.¹⁰⁷ While efficiency in government is never undesirable, the court should not have been so preoccupied with efficiency as to deny court access to those who have a genuine interest in the outcome. The petitioners, here, resided within a few hundred feet of the proposed casinos—if *they* lacked standing, it is difficult to imagine who would have it. Supreme Court Justice Antonin Scalia, in a thoughtful yet provocative article, argued that courts should create a doctrine of standing that remains true to the original intention of the court system—to provide access to those seeking to protect minority, rather than majority, interests.¹⁰⁸

Ultimately, the decision in *Society Hill* is a significant one. Following the court’s holding, to have been successful in their appeal, petitioners were required not only to have participated in the proceedings before the Gaming Board, but also to have filed a formal complaint prior to the Gaming Board’s licensing grant.¹⁰⁹ Because the pertinent section of the Pennsylvania Administrative Agency law did not apply, party status would have been required to sustain a subsequent appeal.¹¹⁰

The practical effects of the decision were revealed just days after the decision was rendered. The Pennsylvania Supreme Court relied upon *Society Hill* in denying several petitions for review of other related Gaming Board decisions.¹¹¹ In the future, this case will likely prevent appeals by private citizens and civic groups, effectively ending all Gaming Act-related challenges in

106. See U.S. CONST. art. III, § 2, cl. 1.

107. *Soc’y Hill*, 928 A.2d at 183.

108. Antonin J. Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 SUFFOLK U. L. REV. 881, 895 (1983).

109. *Soc’y Hill*, 928 A.2d at 183.

110. *Id.* at 182.

111. See *Neighbors Allied for Best Riverfront v. Pa. Gaming Control Bd.*, 927 A.2d 199 (Pa. 2007) (petition denied); *City Council for City of Philadelphia v. Pa. Gaming Control Bd.*, 927 A.2d 199 (Pa. 2007) (petition denied); *Heiko v. Pa. Gaming Control Bd.*, 927 A.2d 200 (Pa. 2007) (petition denied).

Pennsylvania. The liberalization of standing requirements in Pennsylvania that began in the 1970s was constricted by the court in *Society Hill*—perhaps for motives as yet undeveloped.

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