

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

THE PENNSYLVANIA GAMING
CONTROL BOARD, :
Petitioner :
v. :
CITY COUNCIL OF PHILA, et al. :
Respondents :

No. 55 EM 2007
No. 56 EM 2007
Petitions for Review

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SUPREME COURT
EASTERN DISTRICT

AMICUS REPLY BRIEF IN OPPOSITION TO HSP GAMING'S AND THE
PETITIONER'S EMERGENCY PETITION IN THE NATURE
OF A COMPLAINT FOR DECLARATORY JUDGMENT

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May 1, 2007

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I. INTRODUCTION

Amicus Curiae Society Hill Civic Association; Neighbors Allied for the Best Riverfront; Bella Vista United Civic Association; Hilary Regan; Bruce Schimmel; John Dietel and Kathleen O'Neill, a married couple, for themselves and their minor child; Bromley Palamountain; Queen Village Neighbors Association; Pennsport Civic Association; Whitman Council, Inc.; Paul Neuwirth; Rita Gaudet deVecchis; Barbara Seiple; and, Kathleen McGrann, hereby provide this reply brief to advise the Court of a recent relevant case not mentioned by the parties.

II. ARGUMENT

HSP Gaming and the Gaming Control Board make much in their briefs of a certain line of cases involving preemption, such as the *Ortiz*, *Duff* and *Devlin* cases, which they argue stands for the proposition that the substance of the referendum is preempted by state law. However, conveniently omitted in the briefs is any mention to *Nutter v. Dougherty*, 2007 Pa. Commw. LEXIS 132 (*Commonwealth Court of Pennsylvania; decided April 2, 2007*) (*accepted for further appeal and currently pending in the Pennsylvania Supreme Court*), in which the Commonwealth Court conducted a comprehensive analysis of all of those cases and found them inapplicable to a situation -- like we have here -- where the state statute does not expressly preempt local regulation. A copy of the *Nutter* case is attached hereto as Exhibit A.

III. CONCLUSION

WHEREFORE, Amicus Curiae respectfully request that the Court dismiss all filings made by the Board and Intervenors and allow the people their right to vote.

Respectfully submitted,



Dated: May 1, 2007

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