

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

KG URBAN ENTERPRISES, LLC )

*Plaintiff,* )

v. )

Case No. 1:11-cv-12070

DEVAL L. PATRICK, in his )  
official capacity as Governor of )  
the Commonwealth of Massachusetts, and )

CHAIRMAN AND COMMISSIONERS )  
OF THE MASSACHUSETTS GAMING )  
COMMISSION, in their official capacities )

*Defendants.* )

**MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff KG Urban Enterprises, LLC (“KG”) respectfully requests that the Court grant a preliminary injunction as set forth below and for the reasons set forth in the accompanying Memorandum in Support of Motion for a Preliminary Injunction. *See* Fed. R. Civ. P. 65(a). KG seeks to enjoin Defendants Governor Deval L. Patrick and the Chairman and Commissioners of the Massachusetts Gaming Commission from enforcing the Act Establishing Expanded Gaming in the Commonwealth, St. 2011, c. 194 (“Act”). KG seeks a declaration that: (1) the Act violates the federal Equal Protection Clause and the Massachusetts Declaration of Rights; and (2) the Act is preempted by federal law.

KG is entitled to a preliminary injunction because: (1) it “is likely to succeed on the merits” in proving that the Act violates both the federal Equal Protection Clause and the Massachusetts Declaration of Rights, and is preempted by federal law; (2) it is “likely to suffer

irreparable harm in the absence of preliminary relief”; (3) “the balance of equities tips in [KG’s] favor”; and (4) “an injunction is in the public interest.” *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

In support of this motion, KG submits the accompanying Memorandum and the supporting declarations of Andrew M. Stern, Steven M. Gallaway, Stephen Carroll, David Glendon, and Members of the New Bedford City Council.

Because the preliminary injunction KG requests would present no monetary risk to the Defendants, KG requests that bond be set at \$1. *See Fed. R. Civ. P. 65(c)*.

For these reasons, as well as those set forth more fully in the accompanying Memorandum and Complaint, KG respectfully requests that the Court grant this motion and preliminarily enjoin the Defendants from enforcing the challenged provisions of the Act until a final hearing on the merits.

#### **REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(d), KG respectfully submits that oral argument will assist the Court’s resolution of these issues.

November 22, 2011

Respectfully submitted,

/s/ Kevin M. Considine

---

Kevin M. Considine, BBO #542253  
Alexander Furey, BBO #634157  
CONSIDINE & FUREY, LLP  
One Beacon Street, 23rd Floor  
Boston, Massachusetts 02108  
(617) 723-7200

Paul D. Clement (*pro hac vice pending*)  
Jeffrey M. Harris (*pro hac vice pending*)  
Brian J. Field  
BANCROFT PLLC  
1919 M Street, N.W., Suite 470  
Washington, D.C. 20036  
(202) 234-0090

*Counsel for KG Urban Enterprises, LLC*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on November 22, 2011, a copy of the foregoing **MOTION AND MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION** was served upon the counsel for Defendants via hand-delivery at the following address:

Attorney General Martha Coakley  
Office of the Attorney General of Massachusetts  
One Ashburton Place  
Boston, Massachusetts 02108-1518

Governor Deval Patrick  
Office of the Governor of Massachusetts  
Massachusetts State House  
24 Beacon Street, Room 280  
Boston, Massachusetts 02133

/s/ Kevin M. Considine

Kevin M. Considine, BBO #542253  
Alexander Furey, BBO #634157  
CONSIDINE & FUREY, LLP  
One Beacon Street, 23rd Floor  
Boston, Massachusetts 02108  
(617) 723-7200

Paul D. Clement (*pro hac vice pending*)  
Jeffrey M. Harris (*pro hac vice pending*)  
Brian J. Field  
BANCROFT PLLC  
1919 M Street, N.W., Suite 470  
Washington, D.C. 20036  
(202) 234-0090

*Counsel for KG Urban Enterprises, LLC*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

KG URBAN ENTERPRISES, LLC )

*Plaintiff,* )

v. )

Case No. 1:11-cv-12070

DEVAL L. PATRICK, in his )  
official capacity as Governor of )  
the Commonwealth of Massachusetts, and )

CHAIRMAN AND COMMISSIONERS )  
OF THE MASSACHUSETTS GAMING )  
COMMISSION, in their official capacities )

*Defendants.* )

**PROPOSED ORDER GRANTING**  
**MOTION FOR PRELIMINARY INJUNCTION**

This matter is before the Court on the preliminary injunction motion of plaintiff KG Urban Enterprises, LLC ("KG"). *See* Fed. R. Civ. P. 65(a). KG seeks to enjoin Defendants Governor Deval L. Patrick and the Chairman and Commissioners of the Massachusetts Gaming Commission from enforcing the recently enacted Act Establishing Expanded Gaming in the Commonwealth, St. 2011, c. 194 ("Act"). KG contends that the Act violates both the federal Equal Protection Clause and the Massachusetts Declaration of Rights, and is preempted by federal law.

Having considered the parties' arguments, this Court hereby ORDERS that KG's motion for a preliminary injunction is GRANTED. This Court's jurisdiction is proper under 28 U.S.C. §§ 1331, 1343(a), and 1367; venue is proper under 28 U.S.C. § 1391(b). This Court finds that KG has carried its burden of establishing that: (1) it "is likely to succeed on the merits" in

proving that the Act violates the federal Equal Protection Clause and the Massachusetts Declaration of Rights and is preempted by federal law; (2) it is “likely to suffer irreparable harm in the absence of preliminary relief”; (3) “the balance of equities tips in [KG’s] favor”; and (4) “an injunction is in the public interest.” See *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

It is therefore hereby ORDERED that the named Defendants, Governor Deval L. Patrick and the Chairman and Commissioners of the Massachusetts Gaming Commission shall refrain until further order of this Court from enforcing the Act.

SO ORDERED

---

United States District Judge

November \_\_, 2011



COMMONWEALTH OF MASSACHUSETTS  
**THE GENERAL COURT**  
STATE HOUSE, BOSTON 02133-1053

**SENATE DRAFT EXPANDED GAMING PROPOSAL**

June 4, 2010

We are pleased to share our draft proposal to expand gaming in the Commonwealth. This document is still a work in progress and will not be completed until the membership of the Senate and the public have been afforded the opportunity to review it and provide comments.

The Senate Ways & Means Committee will hold a public hearing relative to this draft on Tuesday June 8<sup>th</sup> at 1:00 p.m. in the Gardner Auditorium at the State House.

This draft addresses certain issues of regulatory structure, licensing and crime. Other issues, such as taxation, fees, assessments, distribution of revenue, and a designated tribal license are not addressed in this draft. We are actively seeking input on these issues and on the draft language attached.

We are confident that when the finalized legislation is presented in the coming weeks it will maximize job creation and economic benefits for the Commonwealth while broadly addressing the impacts of gaming.

Sincerely,

A handwritten signature in cursive script that reads "Stan Rosenberg".

Stan Rosenberg  
State Senator

A handwritten signature in cursive script that reads "Karen Spilka".

Karen Spilka  
State Senator

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

KG URBAN ENTERPRISES, LLC )  
)  
*Plaintiff,* )  
)  
v. )  
)  
DEVAL L. PATRICK, in his )  
official capacity as Governor of )  
the Commonwealth of Massachusetts, and )  
)  
CHAIRMAN AND COMMISSIONERS )  
OF THE MASSACHUSETTS GAMING )  
COMMISSION, in their official capacities )  
)  
*Defendants.* )  
)

Case No. \_\_\_\_\_

**DECLARATION OF ANDREW M. STERN**

1. I, Andrew M. Stern, am over 18 years of age, am competent to testify about the matters set forth herein, and submit the testimony below based upon personal knowledge and information.
2. I am the Managing Director and Principal of KG Urban Enterprises, LLC ("KG"). In this position, I oversee and manage all of KG's gaming and redevelopment projects, including each project's design, legal, transactional, and government relations teams.
3. Before joining KG, I served as a Senior Vice President at the New York City Economic Development Corporation. Prior to that, I was an Assistant District Attorney in the Office of the Bronx District Attorney.
4. KG is an equity development company specializing in the redevelopment and adaptive re-use of urban industrial brownfield sites for urban gaming projects, with a focus on the rehabilitation of the vintage industrial structures found on such sites. As a result, KG's efforts necessarily focus on cities with an industrial history.
5. KG employs an integrated method of redevelopment that incorporates gaming, retail, cultural, and commercial activities into a single project, with no artificial barriers between the development and the surrounding community. KG's urban gaming model employs the principles of walkability, connectivity, urban design, and sustainability.



6. In contrast, many other developers build casinos on undeveloped greenfield sites, often near highway interchanges, requiring significant alteration of the natural landscape and the extension of roads, bridges, power lines, water, and sewer services to the new site.
7. KG's principals are partners in a joint venture that recently completed the initial phases of an urban gaming redevelopment project on the 130-acre Bethlehem Steel site in Bethlehem, Pennsylvania. After the Commonwealth of Pennsylvania awarded it a casino license, that joint venture, with Las Vegas Sands Corporation, invested in excess of \$900 million into converting part of the abandoned and deteriorating steel plant site into a thriving, multi-use property that includes casino gaming, hotel, entertainment, and retail components, as well as concept plans for the eventual residential conversion of the former Bethlehem Steel headquarters building. Additionally, the comprehensive redevelopment plan for the Bethlehem Steel site included development of several parcels of land for local organizations — namely, a local television station, a local performing arts non-profit, and the National Museum of Industrial History.
8. In February 2007, KG began the process of identifying suitable property for an urban gaming project in Massachusetts, which had been on the verge of legalizing casino gaming for several years.
9. After studying several sites in New Bedford — an industrial city that fits KG's business model — KG identified a site that currently houses, among other things, an abandoned 160,000 square foot power plant building known as Cannon Street Station. At present, the property houses operations run by two New England-based energy companies, Sprague Energy Corporation and NSTAR.
10. Based upon a careful market study and exhaustive site analysis, KG identified the Cannon Street Station property as an ideal candidate for redevelopment because of its proximity to downtown New Bedford's cultural and entertainment center, its location on the historic New Bedford harbor, the dramatic physical presence of the vintage power plant structure, and the need to undertake extensive environmental remediation and clean-up of the site. KG also concluded that the economically depressed region around New Bedford would benefit greatly from the jobs and tax revenue that the Cannon Street Station project would provide, and that the City of New Bedford itself would derive unique economic benefits from the redevelopment of a currently fenced-off waterfront site housing four contaminated oil tanks and a massive substation of live transformers.
11. After identifying the property, KG spent nearly two years negotiating separate purchase agreements with both Sprague Energy and NSTAR. Additionally, as part of the negotiations with NSTAR, KG spent a significant amount of time vetting possible replacement properties to which NSTAR could move the facility that it currently operates at the Cannon Street site. KG spent extensive time visiting properties throughout New Bedford, meeting with NSTAR representatives about the requirements for the replacement property, reviewing build-out plans for the replacement site with the NSTAR real estate, and negotiating a purchase agreement for the replacement property.
12. The purchase agreements for these properties are option contracts and, thus, even after the agreements were signed, KG is obligated to expend considerable time and resources

maintaining the options for each property. Specifically, as the current property owners undertake environmental remediation tasks and enter into or update agreements with regulators, KG must track and memorialize these updates in the environmental side agreements, resulting in additional legal fees and other costs. Likewise, in order to keep the options open, KG must make escalating monthly option payments for these properties, as well as periodic lump sum premium payments to extend the option term(s).

13. In addition to the purchase agreements, KG was obligated to negotiate environmental side agreements for each portion of the Cannon Street property in order to avoid taking on potentially limitless environmental liability. The agreements were based upon the results of an exhaustive environmental due diligence report that identified the specific contaminants present in the property's ground, harbor, and physical structures — including significant levels of asbestos, and other pollutants from oil residue and coal tar. The environmental side agreements detail the environmental remediation responsibility and liability KG would assume for each portion of the property if it were to exercise its options on the site.
14. From the time KG first identified the Cannon Street property, it assembled a team of nationally recognized experts to evaluate all aspects of the property, including the site's redevelopment potential, and then began to create a master plan to phase the site's design, environmental remediation, and construction. This team consisted of firms specializing in environmental remediation strategies; a casino design firm; an open space and landscape design firm; a historic preservationist; a nationally recognized interior design firm; an engineering firm; an architectural design and project management firm; and a team of attorneys.
15. While KG was negotiating the purchase agreements, this team of experts began investigating the site's physical and environmental condition by blanketing the property for several months, investigating the level of environmental contaminants on the property and determining the extent of remediation necessary to clean up the hazardous materials. The architects and engineers also thoroughly inspected the structural integrity of each building, analyzing each structure's viability for new uses. Based on the results of this investigation, KG's team of experts compiled a series of reports with a comprehensive remediation action plan, a cost analysis, and a detailed catalogue of the historic buildings, their structural integrity, and a mapping of all underground tunnels and piles.
16. KG's design team also spent a significant amount of time establishing communications and developing relationships with city, state and federal officials in order to both understand the city's needs and to communicate the project's benefits.
17. With the results of the environmental investigation, the structural analysis, the gaming market study, and the city's needs in mind, the design team developed a comprehensive concept plan for the property. According to this plan, KG and a joint venture partner would remediate all existing environmental contaminants located on the property, stabilize both the Cannon Street power plant building and the antique granite foundry located on the property, and remove several large and contaminated oil tanks from the site. The environmental remediation plan would allow NSTAR to continue its operations on the Cannon Street Station property during the remediation while its replacement

property is built-out. In total, the joint venture will invest approximately \$50 million in environmental remediation to make the property suitable for redevelopment.

18. The concept plan includes designs for the development of a multi-use property featuring a casino gaming floor, restaurants, a hotel, retail shops, a conference center, parking garages, and an exhibition hall. The design portion of the concept plan will ensure that the project adheres to the tenets of KG's urban gaming business model. In particular, this entire property will sit directly on the city's historic harbor and street grid, with walking connections throughout historic downtown New Bedford.
19. The Cannon Street redevelopment project will consist of two phases: the construction phase and the operational phase, both of which will bring economic benefit to the surrounding region. The construction phase will require significant procurement of goods and services from local businesses, thus creating jobs and increasing incomes in the New Bedford area. The operational phase, after the property opens, will bring about another wave of economic development, job creation, and increased tax revenue.
20. To date, KG has invested more than four years of work and \$4,656,019 in direct costs to prepare its comprehensive development plan for the Cannon Street Station project. This figure includes the costs of consultants, as well as the cost of option payments.
21. If KG ultimately receives a casino license for the Cannon Street site, the full multi-phase build-out of the property will likely exceed \$1 billion. This figure includes approximately \$50 million for a privately financed cleanup of the extensive environmental contamination on the property.
22. KG believes that its plan will offer the greatest economic benefit to the citizens of New Bedford and Southeastern Massachusetts, and it intends to apply for a casino license for the Cannon Street site as soon as it is permitted to do so.
23. In light of the significant commitment of time, effort, and money that is required to identify and evaluate potential development sites — particularly given that KG's preferred urban sites often require environmental remediation — it would take years of work and millions of additional dollars of investment for KG to prepare a comprehensive development plan for a different site in Massachusetts.
24. KG is an urban redevelopment company, not a casino operator. KG's ability to move forward on a project such as the Cannon Street Station depends on partnering with a casino operator (such as Las Vegas Sands for the Bethlehem project). Moreover, the pursuit of a capital-intensive redevelopment project ultimately requires significant financing from outside investors.
25. The recently enacted gaming bill inflicts immediate and irreparable harm on KG by artificially limiting competition for casino licenses only in the Southeastern region. Even if fair competition for a license in the Southeastern region is eventually allowed, the damage to the Cannon Street Station project and to the viability of a casino in the Southeastern region will be permanent. Much of the development work KG has undertaken with respect to the Cannon Street Station project cannot simply be put on hold, but would need to be redone from scratch.

26. In sum, the viability of KG's substantial investment in the Cannon Street Station project and the prospects for the long-term success of a casino in Southeastern Massachusetts depend critically on having a level playing field for the license application process, both within the Southeastern region and among projects in all three regions. By artificially skewing competition in the Southeastern region, and in that region alone, the gaming bill inflicts immediate and irreparable injury on KG.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 17<sup>th</sup> day of November, 2011.



A handwritten signature in cursive script, reading "Andrew M. Stern", is written over a horizontal line.

Andrew M. Stern

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

KG URBAN ENTERPRISES, LLC )

*Plaintiff,* )

v. )

DEVAL L. PATRICK, in his )  
official capacity as Governor of )  
the Commonwealth of Massachusetts, and )

CHAIRMAN AND COMMISSIONERS )  
OF THE MASSACHUSETTS GAMING )  
COMMISSION, in their official capacities )

*Defendants.* )

Case No. \_\_\_\_\_

**DECLARATION OF STEVEN M. GALLAWAY**

1. I, Steven M. Gallaway, am over 18 years of age, am competent to testify about the matters set forth herein, and submit the testimony below based upon personal knowledge and information.
2. I am employed as a Principal with Gaming Market Advisors ("GMA"), a consultancy firm providing clients with independent research and analysis regarding all aspects of the gaming industry. GMA specializes in providing commercial gaming industry clients with market feasibility studies, due diligence, operations analysis, business and marketing plans, and player rewards program design.
3. GMA's principals and associates have hands-on experience in nearly all aspects of the commercial gaming industry, including domestic and international operations, project development, marketing, and market analysis. GMA is very familiar with the United States commercial gaming industry, having conducted engagements in every region of the country. GMA's client list includes some of the gaming industry's largest companies.
4. At GMA, I specialize in providing commercial gaming industry clients with market assessments, casino feasibility analyses, operational reviews, due diligence, economic impact studies, and project valuations. Having worked closely with some of the industry's most respected executives, analysts, and bankers, I have a keen understanding of what factors attract investors and operators to a casino development project, and what factors hinder or preclude investment.
5. I have spent the majority of my professional life working in the gaming industry, completing more than 150 feasibility studies, with a focus on domestic commercial

projects and operations. Additionally, I am personally familiar with nearly every gaming development that has occurred in the United States over the past ten years and the market support that was necessary to complete those projects.

6. Prior to joining GMA, I was a Senior Vice President of The Innovation Group, another casino and gaming consultancy firm that provided market analysis for clients throughout the commercial gaming industry. I am a frequent speaker at conferences, I teach courses on the gaming industry at the University of Nevada, Reno, and I am a contributing writer to Global Gaming Business Magazine. Through these experiences, I have developed personal relationships with executives throughout the commercial gaming industry.
7. At GMA, I provide consulting services to KG Urban Enterprises, LLC ("KG") on an hourly, as-needed basis. KG originally retained GMA in 2009 to conduct a market assessment for a proposed development project in New Bedford, Massachusetts—the Cannon Street Station.
8. KG later expanded the scope of GMA's work to include the completion of a detailed economic impact study quantifying the economic and societal impact its development would have on New Bedford and the surrounding community. In addition, GMA's study included a discussion of the Cannon Street Station's potential to be the role model for future domestic urban gaming projects.
9. Urban gaming is a type of casino development that integrates residential, retail, cultural, and commercial activities into an urban neighborhood, without any barriers—either artificial (highways, parking lots, etc.) or natural (rivers, undeveloped land, etc.)—separating the casino from the surrounding community. The single greatest factor in designing a successful urban gaming casino project is identifying a location that is in close proximity to other retail, dining, and entertainment options. Urban gaming developments, unlike "island" casinos that are built on greenfield sites and set apart from the community, tend to spark the revitalization of downtown areas and generate a symbiotic relationship between the casino and other local businesses. If done properly, an urban gaming development integrates the casino into the fabric of the community's commercial activity.
10. As part of the economic impact study, GMA examined several properties in the New Bedford area to determine if they would be well-suited for urban gaming. Through its economic impact study, GMA concluded that the Cannon Street property, the site chosen by KG, is the best location in New Bedford for an urban gaming development. This specific location is ideal first and foremost because of its proximity to downtown New Bedford, allowing the casino to be fully integrated into the downtown business and entertainment district. Such close proximity to downtown New Bedford ensures that existing New Bedford businesses will be able to service casino guests and will be able to benefit from the dramatic increase in visitor volume to the entire area. Connectivity to these amenities will allow the casino to drive traffic to the entertainment district through cooperative marketing programs, such as the redemption of casino points at downtown restaurants and merchants, thereby expanding the project's economic impact far beyond the casino itself.

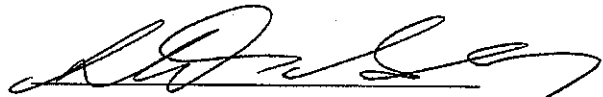
11. As compared with other possible locations, the Cannon Street Station property's close proximity to downtown New Bedford ensures the creation of many new jobs through the project's direct, indirect, and induced effects on employment. Developing the Cannon Street Station into an urban casino will have a direct effect on employment through jobs created at the casino and at nearby businesses frequented by casino patrons, such as restaurants, bars, and hotels. The Cannon Street Station project will also have a substantial indirect effect on employment—namely, the jobs created because of the casino's need for utilities, food products, uniforms, and other goods and services. Lastly, the Cannon Street Station development will have a large induced effect on employment—namely, the jobs created as a result of new spending unrelated to the casino by employees with paychecks they would not have otherwise had.
12. In addition to its close proximity to downtown New Bedford, GMA also concluded that this specific property is ideal for an urban gaming development because it provides sufficient acreage for all necessary aspects of an urban gaming development—the casino, hotel, conference center, and various non-gaming amenities. Further, the physical presence of the power plant structure on the property offers an opportunity to develop an iconic property that will tie directly into the city's architecture.
13. Although the Cannon Street property is the location best-suited for an urban gaming development in New Bedford, the economic value and viability of any project in the Southeastern region is subject to significant uncertainty caused by the recently enacted gaming legislation in Massachusetts, which lacks an open and competitive application process for the award of a casino license in the Commonwealth's Southeastern region. At a minimum, the legislation precludes any non-tribal developer from applying for a casino license until at least July 31, 2012. As such, the legislation makes it likely that any casino in the Southeastern region will lag behind the casino developments in the Commonwealth's other two regions.
14. This delay, along with pervasive uncertainty about whether non-tribal developers will ever be able to seek casino licenses, significantly hinders developers' ability to attract customers, advertisers, and business partners.
15. The success of any casino development project is highly dependent upon being the first casino in a market. When a casino opens to the public, it quickly develops a loyal customer base. Subsequent casinos are perpetually disadvantaged in competing for those customers, many of whom will confine their gaming to the previously opened casino because of its host program and player rewards program.
16. In gaming, personal relationships with the customer are critical. A casino's hosts will contact customers and make special offers to ensure that they return. Casinos also develop loyal customers through rewards programs, where a customer can obtain higher levels of status through increased game play. The higher status affords the customer the opportunity to obtain special deals, points redeemable for cash or free play, and other complimentary offers.
17. A casino that enters a market first has the largest field of potential customers. Any subsequently opened casinos must spend more time and money on advertising and

promotions to target these customers and attempt to pull them away from the casino at which they already have an allegiance. Thus, the significant head start given to casinos in the other two regions will significantly and permanently harm any casino that is ultimately developed in the Southeastern region.

18. The pervasive uncertainty caused by the recently enacted gaming legislation also significantly injures casino developers in the Southeastern region by making it more difficult to attract the gaming operators and investors needed to successfully develop and launch a new casino in that region.
19. In general, property development companies are not also casino operators. The development company must therefore partner with a casino operator and other investors to complete a casino development project. Casino development companies typically seek out and engage investors and gaming operators early in the development process, as these partners are instrumental in the initial stages of a casino development project. The Massachusetts legislation's pervasive uncertainty about whether non-tribal entities will ever be able to apply for the gaming license in the Southeastern region hinders developers' ability to enter into these necessary relationships.
20. I am personally familiar through my consulting work with the prospects that gaming operators would partner with development projects in the Southeastern region of Massachusetts. Particularly in light of the level playing field created in the other two regions, in contrast to the pervasive uncertainty that hangs over the Southeastern region, it will be very difficult for any development project in the Southeast to attract a viable gaming operator until that uncertainty is removed.
21. The recent actions and statements of several gaming operators confirm this to be true. Based upon the Commonwealth's own gaming analyses, the Western region will generate the lowest amount of gaming revenues of the three regional casinos. Yet, notwithstanding the difference in economic opportunity, several national and international gaming operators, such as Penn National Gaming, Ameristar Casinos, Inc., and Hard Rock International, have recently announced their intent to partner with development projects in the Western region.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 16<sup>th</sup> day of November, 2011.



Steven M. Gallaway



**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

KG URBAN ENTERPRISES, LLC )  
 )  
 *Plaintiff,* )  
 )  
 v. )  
 )  
 DEVAL L. PATRICK, in his )  
 official capacity as Governor of )  
 the Commonwealth of Massachusetts, and )  
 )  
 CHAIRMAN AND COMMISSIONERS )  
 OF THE MASSACHUSETTS GAMING )  
 COMMISSION, in their official capacities )  
 )  
 *Defendants.* )  
 )

Case No. \_\_\_\_\_

**DECLARATION OF DAVID GLENDON**

1. I, David Glendon, am over 18 years of age, am competent to testify about the matters set forth herein, and submit the testimony below based upon personal knowledge and information.
2. I am the President and Chief Executive Officer of Sprague Operating Resources LLC (“Sprague”), a provider of heating oil, diesel, and natural gas throughout New England.
3. Sprague operates an oil terminal in New Bedford, MA. Sprague first acquired this property at auction on December 27, 2005 from NSTAR, a Massachusetts-based electric and gas utility. The property Sprague purchased from NSTAR contained several physical structures: oil tanks, truck loading racks, ship docking stations, and the shuttered Cannon Street Station building.
4. Upon purchase, Sprague invested significant capital upgrading the dock, two of the oil tanks, the storm water system, and several of the pipelines. Additionally, Sprague invested in physical security enhancements.
5. The purchase agreement between Sprague and NSTAR required Sprague to assume liability and responsibility for various environmental hazards present on the property. Specifically, the purchase agreement required Sprague to assume liability and responsibility for the release of any hazardous material from the newly acquired property as well as liability arising from the Massachusetts Department of Environmental Protection listing the property under the Tier II permitting rules.

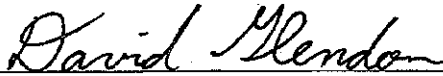
6. The specific contaminants present on the property include hazardous oil materials, asbestos, and other regulated materials. These contaminants were present in two specific areas of the property—the bed of the inner and outer slip and the abandoned Cannon Street Station building.
7. Upon purchasing the property, Sprague began remediating the environmental contaminants.
8. In 2007, KG Urban Enterprises, LLC (“KG”) approached Sprague about purchasing this property for a new urban gaming development, and the parties spent nearly two years negotiating a purchase agreement for the property.
9. During this time, representatives of KG and Sprague met frequently. While the parties were negotiating the purchase agreement, KG retained an environmental consulting firm to conduct an extensive environmental due diligence review of the property to ensure that both parties understood the full extent of the environmental contaminants located on the property.
10. Once the status of the contaminants was identified and the parties reached agreement on payment terms, Sprague and KG entered into a purchase agreement for an option contract on the property on October 9, 2008, for a purchase price of \$15 million. The purchase agreement is conditioned upon the occurrence of several events, including the enactment of Massachusetts gaming legislation and KG successfully obtaining a gaming license for the property. This purchase agreement requires KG to make monthly option payments to Sprague to keep the option open.
11. In addition to the purchase agreement, the parties negotiated and entered into an environmental side agreement addressing the responsibility for environmental remediation on the property. This side agreement provides that, if KG exercises its option to purchase the property, KG will assume the responsibility and liability for several remaining environmental issues contained in the power station building, including remediation of asbestos and other regulated materials.
12. The purchase agreement also requires Sprague to maintain the Cannon Street Station building as long as the option remains open. When Sprague initially purchased the property, it planned to demolish the empty power station building and remediate the associated environmental problems. However, the purchase agreement between Sprague and KG requires Sprague to discontinue any demolition of the power station building, allowing KG to use the building in its casino development.
13. Because of the building’s deterioration and the related environmental concerns, namely cracking asbestos on the building’s exterior, Sprague spent \$536,500 to abate and preserve the building’s smokestack. Had Sprague not entered into the purchase agreement with KG, it would not have otherwise undertaken this remediation project.
14. Based upon the environmental remediation completed thus far on the inner and outer slip, as well as related remediation NSTAR has completed on the connected property, the Massachusetts Department of Environmental Protection and the United States Environmental Protection Agency recently indicated that much of the property’s

environmental remediation was close to completion. That does not, however, include the portion of the property on which the power station building sits where KG has assumed responsibility for remediation.

15. After the purchase agreement's conditions are satisfied and the sale between Sprague and KG closes, Sprague will move its New Bedford, Massachusetts oil terminal operations to its property in Providence, Rhode Island. If the transaction between KG and Sprague is not completed, Sprague plans to continue its operations at the New Bedford property.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 16<sup>th</sup> day of November, 2011.

  
David Glendon

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

KG URBAN ENTERPRISES, LLC )

*Plaintiff,* )

v. )

Case No. \_\_\_\_\_

DEVAL L. PATRICK, in his )  
official capacity as Governor of )  
the Commonwealth of Massachusetts, and )

CHAIRMAN AND COMMISSIONERS )  
OF THE MASSACHUSETTS GAMING )  
COMMISSION, in their official capacities )

*Defendants.* )

DECLARATION OF STEPHEN CARROLL

1. I, Stephen Carroll, am over 18 years of age, am competent to testify about the matters set forth herein, and submit the testimony below based upon personal knowledge and information.
2. I am the Real Estate Manager at NSTAR, an energy delivery company headquartered in Boston, Massachusetts. At NSTAR, I am responsible for all corporate real estate functions for the company, including property acquisitions, dispositions, and lease negotiations.
3. NSTAR operates a gas and electric operations center in New Bedford, Massachusetts. NSTAR's New Bedford property includes an electricity transmission and distribution station, a gas regulator station, a warehouse, a vehicle repair garage, and office buildings.
4. In 2005, NSTAR auctioned off a portion of its New Bedford property. The auctioned property included oil tanks, a shuttered power station building, and waterfront access. Sprague Energy Corporation purchased the property at the auction. The purchase agreement between Sprague and NSTAR required Sprague to assume the responsibility to remediate any environmental contaminants present on the portion of land it purchased.
5. NSTAR, however, retained the obligation to remediate any environmental contaminants present on a portion of the property sold to Sprague. This area is known as the "inner slip" and NSTAR completed the remediation of this portion of its property in October 2011.

6. While the inner slip has been remediated, several environmental contaminants remain on NSTAR's property.
7. In 2007, KG Urban Enterprises ("KG") approached NSTAR about purchasing this property for a new urban gaming development and the parties spent nearly two years negotiating a purchase agreement for the property.
8. While the parties were negotiating the purchase agreement, KG retained an environmental consulting firm to conduct an environmental due diligence review of the property to document the full extent of any environmental contaminants located on the property. Once the status of the contaminants was identified, the parties spent significant time negotiating responsibility for remediation, ultimately entering into an environmental side agreement wholly separate from the property's purchase agreement.
9. After KG and NSTAR agreed upon the responsibility for environmental remediation, the parties entered into a purchase agreement for an option contract on the property. The purchase agreement provides that the ultimate purchase price will escalate over time to account for inflation.
10. This purchase agreement is conditioned upon the occurrence of several events—the enactment of Massachusetts gaming legislation, KG obtaining a gaming license for the property, and KG successfully entering into a purchase agreement with Sprague Energy for the neighboring property. The purchase agreement also requires KG to locate and acquire rights to a replacement site in order to relocate NSTAR's Operations Center and facilities.
11. For this replacement property, KG and NSTAR visited several properties throughout New Bedford. KG and NSTAR ultimately identified a replacement property in the New Bedford Industrial Park. Once the parties identified this property, they negotiated an option contract with the current owner of the replacement property. The purchase agreement for the replacement property requires escalating monthly option payments to be made to the current owner as well as periodic lump sum premiums to keep the option open.
12. Once the remaining conditions of the purchase agreement between KG and NSTAR are satisfied—namely, the passage of the Massachusetts legislation and KG's receipt of a gaming license, NSTAR will begin preparing to move its operations to the replacement property. Before moving its operations, the replacement property needs to be upgraded. The purchase agreement between KG and NSTAR provides that NSTAR will continue to operate its current facilities on the Cannon Street Station property until KG has closed the transaction on the replacement property.
13. Once the transaction on the replacement property is closed, NSTAR will begin the build-out of the replacement property. Once the replacement property is built out, NSTAR will move its New Bedford operations to the new location.
14. If the conditions of the purchase agreement between KG and NSTAR are not satisfied, the purchase agreement permits NSTAR to take over KG's option to purchase the replacement property.

15. The replacement property will permit NSTAR to undertake a significant modernization of its property and operations, offering higher quality service to the residents of New Bedford. The replacement property also ensures that NSTAR's regional operations and approximately two hundred employees will remain in New Bedford.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 16<sup>th</sup> day of November, 2011.



Stephen Carroll

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

KG URBAN ENTERPRISES, LLC )  
 )  
*Plaintiff,* )  
 )  
 v. )  
 )  
 DEVAL L. PATRICK, in his )  
 official capacity as Governor of )  
 the Commonwealth of Massachusetts, and )  
 )  
 CHAIRMAN AND COMMISSIONERS )  
 OF THE MASSACHUSETTS GAMING )  
 COMMISSION, in their official capacities )  
 )  
*Defendants.* )  
 )

---

Case No. \_\_\_\_\_

**JOINT DECLARATION OF MEMBERS OF THE  
NEW BEDFORD CITY COUNCIL**

1. We, the undersigned members of the New Bedford City Council, are over 18 years of age, are competent to testify about the matters set forth herein, and submit the testimony below based upon personal knowledge and information.
2. The recently enacted gaming bill creates a competitive application process for gaming licenses in the western and eastern regions of Massachusetts. For the Southeast region, however, the bill strictly limits those who may compete for gaming licenses.
3. The recently enacted bill singles out the Southeast region for unfavorable treatment even though the region faces some of the most daunting economic challenges of any part of the Commonwealth.
4. The recently enacted bill not only creates a less competitive process for the Southeast region, but creates uncertainty over the process going forward in this region. While those interested in developing casinos in other parts of the Commonwealth may move forward immediately, there will be at least a year long delay before any development can occur in the Southeast region.
5. City Officials have worked to attract viable proposals for a casino within the City of New Bedford as a possible site for a casino in the Southeast region.

6. Developing a casino in New Bedford would provide a much needed boost to the local and regional economy by bringing about a wave of new jobs and income. Initially, the procurement of construction goods and services will create many new jobs and revenues. Once operational, the casino's hiring and training of employees will create a substantial new revenue stream for New Bedford and the surrounding area. The economic boost will be felt beyond the casino itself. Operating a new casino in New Bedford will create the need and demand for other services throughout the surrounding area, including new restaurants, shops, hotels, entertainment, and nightlife. Each of these new businesses will themselves create new jobs and revenues, thereby boosting the local economy of both New Bedford and the surrounding region.
7. The recently enacted gaming bill puts an immediate hold on the development of any New Bedford site or any site within the Southeast region. The negative impact on the potential for the development of an economically valuable casino in New Bedford is significantly exacerbated by the fact that casino development in the other regions is not hampered by artificial restrictions on who can compete for a license and when. Capital that would otherwise flow to the best overall projects will flow to the other regions. The impact on New Bedford and the Southeast region more generally will be both immediate and long lasting. The effects will be immediate because development resources will flow to other parts of the Commonwealth immediately. The effects will be long lasting because giving other regions a head start in developing casinos will mean that those casinos are highly likely to become operational before a site in New Bedford or the Southeast region more generally. In a state without a prior history of lawful gaming, giving casinos in a certain region a head start may create patterns of behavior that are not easily reversed.
8. If other regions are given an artificial head start in developing gaming, New Bedford and the Southeast region may never be able to recapture the full economic development potential that would be realized by competition on an even playing field.
9. Even beyond the negative economic impact on the City and the region, by limiting competition for gaming licenses in Southeast Massachusetts, the bill deprives the local officials and citizens of that region of the opportunity to support the best gaming proposal on the merits.
10. For example, KG Urban Enterprises has expended considerable effort and resources creating a plan to redevelop brownfield property on New Bedford's waterfront into a vibrant urban gaming development. The recently enacted legislation prevents KG from pursuing a license for this project and precludes the commonwealth from the opportunity to review the project on its merits.
11. A truly competitive application process, such as the one used for the rest of the Commonwealth, would ensure that the ultimate licensee provides the region with the maximum economic benefit, jobs, and tax revenue.



I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 17<sup>th</sup> day of November, 2011.

Brian K. Gomes  
Sign Name

BRIAN K. GOMES  
Print Name

Kathy M. Dehner  
Sign Name

KATHY M. DEHNER  
Print Name

Joseph P. Lopez  
Sign Name

Joseph P. Lopez  
Print Name

David Alves  
Sign Name

DAVID ALVES  
Print Name

Steven Martin  
Sign Name

Steven Martin  
Print Name

John T. Saunders  
Sign Name

JOHN T. SAUNDERS AT LARGE  
Print Name

Jane L. Goncalves  
Sign Name

JANE L. GONCALVES  
Print Name

Bruce Rank Jr.  
Sign Name

Bruce Rank Jr.  
Print Name

\_\_\_\_\_  
Sign Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Sign Name

\_\_\_\_\_  
Print Name