

## Constitutionality of a Ballot Measure

*Ajax Gaming Ventures v. Brown*  
(*William E. Smith, D.R.I. 1:06-cv-336*)

The suit challenged the constitutionality of a ballot measure in an upcoming election. The court denied immediate relief, because constitutionality could be assessed after the election. The measure did not pass.

*Subject:* Ballot measures. *Topics:* Ballot measure; intervention.

The deadline for printing ballots and other election materials in Rhode Island for the 2006 general election was August 9.<sup>1</sup> On Friday, July 21, a casino developer associated with Donald Trump and its municipal partner, the Town of Johnston, filed a federal action to enjoin inclusion on the ballot of a constitutional amendment that would have permitted Harrah's and its municipal partner, the Town of West Warwick, to establish a casino with the Narragansett Indian Tribe.<sup>2</sup> The plaintiffs alleged that the proposed amendment violated equal protection and the First Amendment because it would bestow discriminatory commercial and political benefits on the ethnic tribe and its business partners.<sup>3</sup> With their complaint, the plaintiffs filed a motion for a temporary restraining order and a preliminary injunction.<sup>4</sup>

Rhode Island's supreme court had declined to issue an advisory opinion on the matter.<sup>5</sup>

On Monday, the tribe and its partner developer moved to intervene,<sup>6</sup> a motion that was granted by stipulation on August 9.<sup>7</sup> Judge William E. Smith allowed Rhode Island's attorney general to participate in the case as an *amicus curiae*.<sup>8</sup>

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1. Opinion, *Ajax Gaming Ventures, LLC v. Brown*, No. 1:06-cv-336 (D.R.I. Aug. 8, 2006), D.E. 17; Agreed Statement of Facts, *id.* (July 28, 2006), D.E. 9; see *Eleventh-Hour Ruling Likely on West Warwick Casino Vote*, Providence J. Bull., July 26, 2006, at B1 ("If the ballot is not set by Aug. 9, the state faces \$1 million in extra preparation and printing costs, said Peter Kerwin, spokesman for Secretary of State Matt Brown.").

2. Complaint, *Ajax Gaming Ventures, LLC*, No. 1:06-cv-336 (D.R.I. July 21, 2006), D.E. 1; see *Johnston Files Suit to Block Casino Vote*, Providence J. Bull., July 22, 2006, at A1.

3. Complaint, *supra* note 2; Opinion, *supra* note 1, at 1–3.

4. Motion, *Ajax Gaming Ventures, LLC*, No. 1:06-cv-336 (D.R.I. July 21, 2006), D.E. 2.

5. *In re* Advisory Opinion to the Governor, 904 A.2d 67 (R.I. 2006); see Agreed Statement of Facts, *supra* note 1, at 3; see also *Court Refuses to Consider Casino Vote*, Providence J. Bull., July 14, 2006, at A1.

6. Intervention Motion, *Ajax Gaming Ventures, LLC*, No. 1:06-cv-336 (D.R.I. July 24, 2006), D.E. 5.

7. Stipulation, *id.* (Aug. 9, 2006), D.E. 18.

8. Opinion, *supra* note 1, at 3 n.2; see Transcript at 37, *Ajax Gaming Ventures, LLC*, No. 1:06-cv-336 (D.R.I. Aug. 7, 2006, filed Oct. 2, 2006), D.E. 30.

Tim Reagan interviewed Judge Smith for this report by telephone on May 23, 2012.

Judge Smith held a status conference on Tuesday, July 25.<sup>9</sup> It was his practice in emergency cases to quickly assemble the parties for a conference and work toward stipulated facts.<sup>10</sup> Three days later, the parties filed an agreed statement of facts.<sup>11</sup> On August 7, a little more than two weeks after the case began, Judge Smith held a hearing,<sup>12</sup> and on the following day he denied the plaintiffs preliminary injunctive relief.<sup>13</sup> “While it is probably true that Plaintiffs have demonstrated a likelihood of success on the merits for at least one claim—perhaps even a substantial likelihood of success—this Court is not persuaded of the potential for irreparable harm to Plaintiffs if the referendum question appears on the ballot.”<sup>14</sup> The constitutionality of the amendment could be tested after the election, and it might not even pass.<sup>15</sup>

In fact, the amendment failed.<sup>16</sup> On November 13, the parties stipulated dismissal of the case.<sup>17</sup>

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9. Docket Sheet, *Ajax Gaming Ventures, LLC*, No. 1:06-cv-336 (D.R.I. July 21, 2006).

10. Interview with Hon. William E. Smith, May 23, 2012.

11. Agreed Statement of Facts, *supra* note 1, at 3; Transcript, *supra* note 8, at 83 (“I want to thank all counsel for . . . working together to develop a stipulation of facts that allows this case to be decided on an expedited basis”).

12. Docket Sheet, *supra* note 9; Transcript, *supra* note 8.

13. Opinion, *supra* note 1; see *U.S. Court Keeps Casino Question on Nov. Ballot*, Providence J. Bull., Aug. 9, 2006, at A1.

14. Opinion, *supra* note 1, at 7.

15. *Id.* at 8–9.

16. See Scott Mayerowitz, *No Question, Casino Rejected*, Providence J. Bull., Nov. 8, 2006 (reporting that the vote against the amendment was approximately 63%).

17. Stipulation, *Ajax Gaming Ventures, LLC v. Brown*, No. 1:06-cv-336 (D.R.I. Aug. 8, 2006), D.E. 31.