[J-79-2008] [MO: Castille, C.J.]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

PETER DEPAUL,	:	No. 194 EM 2007
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Petitioner	:	
	:	
	:	
v.	:	
	:	ARGUED: May 13, 2008
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COMMONWEALTH OF PENNSYLVANIA AND THE PENNSYLVANIA GAMING CONTROL BOARD,	:	
	:	
Respondents	:	

DISSENTING OPINION

MR. JUSTICE McCAFFERY

I agree with many of the majority opinion's significant conclusions. I agree that Section 1513 of the Pennsylvania Race Horse Development and Gaming Act ("Gaming Act")[1] implicates the free speech rights protected by Article I, Section 7 of the Pennsylvania Constitution. See maj. slip op. at 17-18. I agree that the Pennsylvania Constitution requires that we apply strict scrutiny in our review of Section 1513. See maj. slip op. at 18. I agree that the Gaming Law measures, such as Section 1513, designed to "attempt to minimize or eliminate corruption, or even the appearance of corruption, in the gaming industry involve a compelling state interest." See maj. slip op. at 22. I agree that the purpose of Section 1513 is "to encourage confidence both in the legislative body which

[1] 4 Pa.C.S. § 1513.

authorized the new industry and the integrity of the industry itself." See maj. slip op. at 24. I agree that "in targeting campaign contributions as a manner of minimizing the potential for corruption … the General Assembly was [not] obliged to conduct its own independent study of the issue … [but could] rely[] upon the experience of other states with gaming." See maj. slip op. at 22. In fact, I believe that the well-written majority opinion proceeds splendidly until its final pages, when it determines that the laudable and compelling state goal of Section 1513 to prohibit principals in the gaming industry from making political contributions is overbroad because it happens to conflict with one clause of several applicable "public policy purposes" articulated in Section 1102 of the Gaming Act.[2] I believe at this point in the opinion, the majority takes an erroneous path. Moreover, because I believe that Section 1513 is narrowly tailored to its compelling state purpose, has a "plainly legitimate sweep,"[3] and is thus constitutional, I must respectfully dissent.

Any exploration of the issue before us must **hew** to the following fundamental principles concerning constitutional challenges. "[A]ny party challenging the constitutionality of a statute must meet a heavy burden, for we presume legislation to be constitutional absent a demonstration that the statute **'clearly, palpably, and plainly'** violates the Constitution." Konidaris v. Portnoff Law Associates, Ltd., 953 A.2d 1231, 1239 (Pa. 2008) (emphasis added; citation omitted). The presumption that legislative enactments are constitutional is strong. Commonwealth v. McMullen, 961 A.2d 842, 846 (Pa. 2008); see also 1 Pa.C.S. § 1922(3) (providing that in ascertaining the intent of the General Assembly in the enactment of a statute, there is the presumption that the General Assembly did not intend to violate federal and state constitutions by enacting such

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[2] 4 Pa.C.S. § 1102.

[3] Washington State Grange v. Washington State Republican Party, ___ U.S. ___, 128 S.Ct. 1184, 1190 (2008).

legislation). All doubts are to be resolved in favor of finding that the legislative enactment passes constitutional muster. Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth, 877 A.2d 383, 393 (Pa. 2005). Moreover, "**statutes are to be construed whenever possible to uphold their constitutionality**." In re William L., 383 A.2d 1228, 1231 (Pa. 1978) (emphasis added).

In my opinion, the approach taken by the majority in determining the constitutionality of Section 1513 is at odds with these principles. The majority declares Section 1513 invalid because it is not narrowly tailored to one of the many "public policy purposes" articulated in the Gaming Act, namely the goal that the Gaming Act is "to prevent the actual or appearance of corruption that may result from large campaign contributions." 4 Pa.C.S. § 1102(11). However, this statement of principle is only **one** articulated goal in **one** of eleven subsections of Section 1102. In fact, the majority quotes and **emphasizes** several "public policy purposes" from Section 1102 as follows:

> (1) The primary objective of this part to which all other objectives and purposes are secondary is **to protect the public** through the regulation and policing of all activities involving gaming and practices that continue to be unlawful.
>
> * * * *
>
> (11) It is necessary to maintain the integrity of the **regulatory control and legislative oversight** over the operation of slot machines in this Commonwealth; to prevent the actual or appearance of corruption that may result from **large campaign contributions**; ensure the bipartisan administration of this part; and **avoid actions that may erode public confidence in the system of representative government**.

Maj. slip. op. at 24 (emphasis in original; quoting 4 Pa.C.S. § 1102(1), (11)).

The fact that the majority emphasizes several goals from Section 1102, not simply the goal concerning "large contributions," indicates that the majority believes that these

goals are applicable to and potentially supportive of Section 1513. I would certainly agree. In fact, I believe that Section 1513's prohibition on political contributions by gaming industry principals can safely be interpreted as a requisite means to "avoid actions that may erode public confidence in the system of representative government." 4 Pa.C.S. § 1102(11). Moreover, the General Assembly indicated that its primary goal, **to which all others are secondary**, including the one concerning large campaign contributions, is "to protect the public through the regulation and policing of all activities involving gaming." 4 Pa.C.S. § 1102(1). I believe Section 1513 falls under the blanket of that goal as well.[4]

The fact that the General Assembly articulated a concern regarding "the actual or appearance of corruption that may result from large **campaign** contributions," does not mean that the General Assembly was not **additionally** concerned with the corrupting connection, whether actual or apparent, between politics in this Commonwealth and **all** monetary contributions of gaming industry principals. Section 1513 does not merely prohibit **campaign** contributions. That section, entitled "**Political influence**," eliminates **all** contributions by gaming industry principals to candidates, political party committees, other political committees, or related organizations. Also eliminated are "political contribution[s] … to any association or organization, including a nonprofit organization, that has been solicited by, or knowing that the contribution or a portion thereof will be contributed to, the

[4] Arguably, the "public policy purpose" set forth in Section 1102(7) also applies. That section deems the participation in authorized gaming to be a "**privilege**, conditioned upon the proper and **continued qualification** of the licensee or permitee…." 4 Pa.C.S. § 1102(7) (emphasis added). Section 1513(c) provides that certain violations of that section shall result in suspension or revocation of the gaming license. Additionally, Section 1102(8) provides that there shall be strict monitoring and enforcement control over all aspects of gaming authorized by the provisions of the Gaming Act "through regulation, licensing and appropriate enforcement actions of specified locations, persons, associations, **practices**, **activities**, licensees and permittees." 4 Pa.C.S. § 1102(8) (emphasis added). I believe that Section 1513 falls under the ambit of this policy purpose as well.

elected official, executive-level public employee **or** candidate for nomination or election to a public office in this Commonwealth." 4 Pa.C.S. § 1513(a.1) (emphasis added).

That Section 1513 exists at all is, in my opinion, conclusive proof that the General Assembly was concerned with more than the corrupting influence or the appearance of a corrupting influence of large campaign contributions. We must presume that the General Assembly intends that the **entire statute** is "to be effective and certain." 1 Pa.C.S. § 1922. Further, even if there is a conflict between Section 1513 and one of the stated "public policy purposes" of Section 1102, which I believe does not exist for the above and other reasons,[5] we must observe the rule that the particular controls the general. "Whenever a general provision in a statute shall be in conflict with a special provision in the same or another statute, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions is irreconcilable, the special provisions shall prevail and shall be construed as an exception to the general provision…." 1 Pa.C.S. § 1933. In other words, we are required to presume the General Assembly knew exactly what it was doing

[5] Even if we directly compare Section 1513 with the public policy purpose that the Gaming Act is "to prevent the actual or appearance of corruption that may result from large campaign contributions," it is not a certainty that these two provisions are in conflict. The majority opinion never explored what the General Assembly meant by "large campaign contributions." Because the majority holds that Section 1513 could be more narrowly tailored to permit "less than" large campaign contributions, it seems to regard the matter of large campaign contributions as one involving a single contribution from a single source, such as Petitioner herein. That is, a large campaign contribution is one that emanates from **one** gaming industry principal. However, the actual or apparent corrupting influence of large campaign contributions can also be viewed as being accomplished by the **cumulative** effect of many small contributions coming from the many gaming industry principals throughout the state. Indeed, this interpretation is suggested by Section 1513's explicit prohibition of many seemingly small contributions. See infra n.6. Ultimately, even if there is a conflict in the Gaming Act under **one** possibility, we are required, whenever possible, to construe a statute in a manner that upholds its constitutionality, i.e., where another possibility supports the validity of the statute. See In re William L., supra at 1231.

when it promulgated Section 1513, notwithstanding any articulated public policy provision that superficially seems to be in conflict with the actual legislation.

Boiled down to its essence, however, the majority opinion declares Section 1513 invalid on the grounds that the General Assembly somehow "forgot" that in promulgating Section 1513 (a detailed, clear and specific piece of legislation), it was concerned only with addressing the issue of "large campaign contributions."[6] I cannot support such an analysis, one that, I respectfully suggest, flies in the face of a plain reading of the Gaming Act, applicable rules of statutory construction, and the fundamental and controlling principles of law that make invalidating a statute on constitutional grounds a more strenuous exercise than that followed by the majority. Moreover, I fear that the manner by which the majority

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[6] Indeed, the detailed and nuanced thought devoted to Section 1513 by the General Assembly is clear simply from a perusal of its definition of "contribution," as follows:

> "Contribution." Any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing made to a candidate or political committee for the purpose of influencing any election in this Commonwealth or for paying debts incurred by or for a candidate or committee before or after any election. The term shall include the purchase of tickets for events including dinners, luncheons, rallies and other fundraising events; the granting of discounts or rebates not available to the general public; or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; and any payments provided for the benefit of any candidate, including payments for the services of a person serving as an agent of a candidate or committee by a person other than the candidate or committee or person whose expenditures the candidate or committee must report. The term also includes any receipt or use of anything of value received by a political committee from another political committee and also includes any return on investments by a political committee.

4 Pa.C.S. § 1513(d).

invalidates Section 1513 will cause confusion for our lower courts when in the future they are required to review the constitutionality of legislation. Statements of public policy or legislative intent in statutes (when they exist at all) aid the courts in interpreting statutes. If an act is completely at odds with the stated purpose of the legislation, that is one thing. However, where we can easily view a piece of legislation as being in harmony with at least some of the stated purposes of the governing act, I do not see how our stringent principles of constitutional review, which impose a strong presumption of constitutionality on acts of legislation and require the courts to, if at all possible, uphold the constitutionality of a statute, permit us to use the path taken by the majority in this case. It is imperative that a request for judicial interference "with the process by which the General Assembly enacts laws" be approached with "trepidation." Pennsylvanians Against Gambling, supra at 404.

Accordingly, in order to resolve the case before us, I believe we must directly address the constitutionality of Section 1513 based on **its** provisions, i.e., we must decide whether a total prohibition of political contributions by gaming industry principals is violative of the Pennsylvania Constitution.[7] Thus, unlike the majority, I would apply a full Edmunds analysis to the issue.[8] Further, as outlined below, I believe that such analysis leads to the conclusion that Section 1513 survives constitutional scrutiny.

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[7] As the majority observes, the critical constitutional provision at issue states: "The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty." Pa. Const. art. I, § 7.

[8] Commonwealth v. Edmunds, 586 A.2d 887 (Pa.1991). The four Edmunds inquiries devised to facilitate a principled consideration of state constitutional doctrine pertain to: (1) the text of the provision of our Constitution; (2) the history of the provision, including the case law of this Commonwealth; (3) relevant case law from other jurisdictions; and (4) policy considerations, "including unique issues of state and local concern, and applicability within modern Pennsylvania jurisprudence." Id. at 895.

(continued…)

The majority correctly concludes that the Commonwealth has a compelling state interest in eliminating actual or the appearance of corruption connected with political contributions from gaming industry principals, based on what appears to be the majority's adoption of the able and relevant analysis of the Louisiana Supreme Court[9] and the New Jersey Superior Court, Appellate Division.[10] Maj. slip op. at 22-23. Further, the majority appears to find the compelling state interest requirement of a strict scrutiny analysis to be substantially similar to the "exacting scrutiny" or "closely drawn" standard applicable to First Amendment challenges to similar bans on political contributions. See maj. slip op. at 12; see also Buckley v. Valeo, 424 U.S. 1, 15-29 (1976) (per curiam) (upholding under the First Amendment political contribution limits imposed by the Federal Election Campaign Act of 1971 under an "exacting scrutiny" standard); Nixon v. Shrink Missouri Government PAC, 528 U.S. 377, 387-88 (2000) (determining that political contribution limits that involve significant interference with free association rights under the First Amendment can survive

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(…continued)
The majority opinion actually starts upon an Edmunds analysis by (1) articulating the text of the relevant constitutional provision (Article 1, Section 7); (2) briefly reviewing the history of the provision and relevant case law; and (3) making a **limited** review of relevant case law from other jurisdictions. But the majority has limited its review of relevant case law from other jurisdictions to cases involving bans on political contributions from persons involved in the gaming industry. However, all case law involving bans or limits on political contributions from whatever source (e.g., from lobbyists) is relevant to our inquiry. Constitutional free speech and association guarantees do not carve out unique considerations for persons involved in the gaming industry. Further, the majority does not engage in the final Edmunds area of inquiry: "policy considerations, including unique issues of state and local concern, and applicability within modern Pennsylvania jurisprudence."

[9] Casino Ass'n of La. v. State *ex rel.* Foster, 820 So.2d 494 (La. 2002), cert. denied 537 U.S. 1226 (2003).

[10] In re Petition of Soto, 565 A.2d 1088 (N.J. Super. Ct. App. Div. 1989), certif. denied, 583 A.2d 310 (N.J. 1990), cert. denied 496 U.S. 937 (1990).

if the government can demonstrate that the contribution limit is "closely drawn" to match a sufficiently important government interest).[11]

Of particular significance to our review is the fact that a ban or limitation on political monetary contributions has only an **indirect** and typically a **marginal impact** on free speech and association rights.

> [A] limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication. A contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support. The quantity of communication by the contributor does not increase perceptibly with the size of his contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing. At most, the size of the contribution provides a very rough index of the intensity of the contributor's support for the candidate. … While contributions may result in political expression if spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor.

Buckley, supra at 20-21 (footnote omitted); see also Nixon, supra at 386-87 (quoting Buckley, supra at 20-21); and California Medical Ass'n v. Federal Election Comm'n, 453 U.S. 182, 196 n.16 (1981) (stating that political contributions are merely an "attenuated form of speech").

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[11] However, as Petitioner notes, there is some disagreement as to whether the standard articulated in Buckley, or as applied in subsequent case law, equates to "strict scrutiny." See, e.g., Randall v. Sorrell, 548 U.S. 230, 266-67 (2006) (Thomas, J. concurring) ("I would overrule Buckley and subject both the contribution and expenditure restrictions … to strict scrutiny…."); see also maj. slip op. at 10 n.9. Notwithstanding, we must, as noted by the majority herein, apply a strict scrutiny standard in this case. See Pap's A.M. v. City of Erie, 812 A.2d 591, 605-12 (Pa. 2002).

Section 1513's prohibition on political contributions does not prevent any gaming industry principal from exercising **other** more direct rights of free political speech or association. For example, Section 1513 does not prohibit the public endorsement of a candidate, cause, or issue; giving of one's time to a political cause; erection of lawn signs or handing out political materials; participation at the polls; providing advice to a candidate or to any voters willing to listen; or the engagement in other like forms of expression and association. Thus, Section 1513, at most, infringes upon an "attenuated form of speech." California Medical Ass'n, supra at 196 n.16.

On the other side of the equation, it must be recognized that political contribution limits and bans, although imposing some restrictions on the free exercise of political expression and association, provide significant value to the electoral process by protecting the integrity of the system, which in turn, encourages greater political participation. As the United States Supreme Court explained:

> Because the electoral process is the very means through which a free society democratically translates political speech into concrete governmental action, contribution limits, like other measures aimed at protecting the integrity of the process, tangibly benefit public participation in political debate. For that reason, when reviewing [a legislature's] decision to enact contribution limits … [courts should afford] deference to [the legislature's] ability to weigh competing constitutional interests i**n an area in which it enjoys particular expertise**.

McConnell v. Federal Election Comm'n, 540 U.S. 93, 137 (2003) (emphasis added; quotation marks omitted) (quoting Nixon, supra at 400-01 (Breyer, J., concurring)).

As the majority notes, Section 1513 was devised "to encourage confidence both in the legislative body which authorized the new industry [and by extension, the integrity of the political process] and the integrity of the industry itself." Maj. slip op. at 24. Certainly, our General Assembly had the "particular expertise" to evaluate the necessity of a complete

ban as opposed to a lesser limitation on political contributions by gaming industry principals. The question is whether the General Assembly's determination is sufficiently "narrowly tailored" (maj. slip op. at 25) to accomplish its compelling and obvious state interest in preserving the integrity of the political process and of the gaming industry itself without causing unnecessary infringement on free speech and association rights under the Pennsylvania Constitution. This inquiry has three components: (1) whether the class of persons banned from making political contributions is narrowly drawn; (2) whether the class of persons who will be deprived of contributions by the ban (i.e., candidates, political committees, or other related organizations) is narrowly drawn; and (3) whether a ban on contributions as opposed to a limitation upon them is necessary to achieve the Commonwealth's legitimate, compelling state interest.

With respect to the first component, the majority appears to be satisfied that the class of individuals banned from making political contributions by Section 1513 is sufficiently narrow to withstand constitutional strict scrutiny. See maj. slip op. at 21-22, emphasizing portions of In re Petition of Soto, 565 A.2d 1088, 1100 (N.J. Super. Ct. App. Div. 1989), certif. denied, 583 A.2d 310 (N.J. 1990), cert. denied 496 U.S. 937 (1990). Soto upheld New Jersey's ban on political contributions by "key" casino employees. I certainly agree with the majority, and with the supporting analysis of Soto, that the class of individuals prohibited from making political contributions by Section 1513 has been narrowly drawn by the General Assembly to meet its compelling state interest. Thus, I believe that the aspect of Section 1513 concerning the class of gaming industry principals survives strict scrutiny.

With respect to the second component, the majority appears to agree with Petitioner's argument that Section 1513 cannot survive strict scrutiny because that section's blanket prohibition of political contributions includes persons running for political office that have "no connection … [with] the gaming industry." Maj. slip op. at 25. I must

disagree. Petitioner's argument ignores the reality of party politics and the fungible nature of money. One need not contribute only to party leaders to achieve certain political goals or give rise to the appearance of corruption or favoritism. The same result may be achieved or arise if an individual spreads political contributions among a party's slate of candidates for minor political posts. By contributing to "minor" political candidates, an individual still curries favor with the party and allows the party to more freely direct its thus enlarged larger pot of money toward the attainment of more significant elected offices. In other words, the contributed money could still benefit those with influence over the regulation of the gaming industry in this Commonwealth, even though initially directed to a candidate for, say, register of wills or local sheriff.

Further, I find fully persuasive the analysis of the New Jersey Superior Court, Appellate Division with respect to the importance of prohibiting gaming industry political contributions to **all** political parties or their candidates.

> Political parties are institutions of very great importance under our form of government. They are, in fact, the effective instrumentalities by which the will of the people may be made vocal, and the enactment of laws in accordance therewith made possible. So potent have they become in administering the affairs of government that they are now regarded as inseparable from, if not essential to, a republican form of government, … and as a necessary adjunct to representative government. They are imbued with a quasi-governmental character.
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> Political parties have come to be regarded by the courts as governmental agencies through which the sovereign power is exercised by the people. The conception that a political party is merely a private association of citizens has been generally abandoned. In most jurisdictions the state has seen fit to declare that political parties shall be, as to their mode of holding conventions and nominating candidates for public office, regarded as public bodies whose methods are to be controlled by the state.

> The compelling state interest in maintaining the integrity of political parties and organizations from undue influence by those individuals who, by the very nature of their employment, play a pivotal role in the casino industry justifies upholding the restrictions found in [the New Jersey legislation].

Soto, supra at 1097-98 (citations omitted). Further, the New Jersey court relevantly determined:

> Nor do we find the statute overbroad because it prohibits contributions to any political candidate and committee within the State regardless of whether the particular office or committee has anything to do with casino regulation. This argument was answered in Schiller Park [Colonial Inn, Inc. v. Berz, 349 N.E.2d 61, 67 (Ill. 1976)], where the Illinois [Supreme] Court stated that '[i]t is difficult and probably impossible to determine precisely which officeholders will be in a position to exercise influence in the area of liquor regulation.' … As noted above, the Schiller Park court observed that '[t]he nature of our political system and past history suggests that political officials or public officers may wield powers or possess influence beyond the powers and influence inherent in their official duties.' [Id.]

Soto, supra at 1100.

Thus, because of the importance and influence of political parties, indeed their "quasi-governmental character," I believe that a prohibition on contributions to even "minor" and purportedly "unconnected-to-gaming-issues" candidates narrowly meets the General Assembly's compelling state goal of preventing the appearance of, or actual, corruption that is associated with political contributions from gaming industry principals. Accordingly, unlike the majority, I find Petitioner's argument to be without merit.

With respect to the last component, I believe that a ban as opposed to a limitation on political contributions withstands constitutional strict scrutiny as well. First, I note that there is no per se rule among our sister courts that bans on political contributions, rather than

limits, are unconstitutional. See Green Party of Connecticut v. Garfield, 590 F.Supp. 2d 288, 310 (D.Conn. 2008) ("Courts that have had the opportunity to examine bans on contributions from selected groups, including lobbyists … have rejected the argument that bans are per se unconstitutional simply because they are 'bans' and not merely 'limits' on contributions." (citing numerous examples)). Further, I note that, in an opinion that would, unlike this Court, apply less than strict scrutiny, the United States Supreme Court rejected the argument that courts should apply a stricter form of scrutiny when reviewing legislative bans on political contributions than when reviewing legislative limitations on political contributions, noting that "the level of scrutiny is based [not on whether there is a ban or simply a limitation on contributions, but] on the importance of the political activity at issue to effective speech or political association." Federal Election Comm'n v. Beaumont, 539 U.S. 146, 161 (2003) (quotation marks omitted).

Second, as the majority opinion notes, New Jersey and Louisiana courts have upheld the constitutionality of **bans** on political contributions by gaming industry principals. Soto, supra; Casino Ass'n of La. v. State *ex rel.* Foster, 820 So.2d 494 (La. 2002), cert. denied 537 U.S. 1226 (2003). Other courts have also upheld bans on political contributions by those in other industries. See, e.g., Schiller Park, supra (ban on contributions by holders of liquor licenses or principals of a liquor licensee); Green Party of Connecticut, supra (ban on contributions by lobbyists, state contractors, and their immediate family members); Mariani v. United States, 212 F.3d 761 (3d Cir. 2000) (en banc) (ban on corporate hard money contributions). This is by no means an exhaustive list, and other courts have come to different conclusions.[12] However, at the root of those decisions

[12] E.g., Fair Political Practices Commission v. Superior Court of Los Angeles County, 599 P.2d 46, 53 (Cal. 1979) (holding that governmental interests warranting substantial restrictions on political rights have no greater application to lobbyists than to other private campaign contributors; thus, a ban on political contributions by lobbyists is invalid because (continued…)

upholding bans on contributions and rejecting the argument that limitations would be more narrowly tailored to accomplish the state's interests, is the determination that the critical need to dispel even the appearance of corruption restrains courts from "second-guess[ing] a legislative determination as to the need for prophylactic measures where corruption is the evil feared." Soto, supra at 1098 (quoting FEC v. National Right to Work Committee, 459 U.S. 197, 210 (U.S. 1982)). As the New Jersey Superior Court, Appellate Division determined, apropos to the particular issue before this Court:

> Given the acknowledged vulnerability of the casino industry to organized crime and the compelling interest in maintaining the public trust, not only in the casino industry but also the governmental process which so closely regulates it, … there is no viable alternative available [to a ban rather than a limitation on political contributions] to prevent the appearance of, or actual, corruption of the political process in New Jersey. … [P]ublic perception that any improper influence has infiltrated the regulatory and judicial processes, **however slightly**, would undermine the trust that is essential to continued confidence in the industry and, what is more important, in state government.

Id. (citations and quotation marks omitted; emphasis added).

Further, we should not overlook the fact that a mere limitation on political contributions, rather than a ban, may undercut the compelling state purpose of the legislation because many accumulated **small** contributions may be able to achieve the evil that the legislature was trying to prevent. As the Illinois Supreme Court sagely observed, with respect to challenged legislation banning political contributions by liquor licensees and their principals:

(…continued)
it is not "closely drawn to avoid unnecessary abridgment of associational freedoms.") (quoting Buckley, supra at 25)).

> We agree that it is large campaign contributions which are most likely to create a danger that liquor licensees or other individuals in the liquor business may obtain a degree of influence over public officials. The General Assembly may reasonably have believed, however, that its efforts to further the relevant State interests would have been much less effective if only contributions above a certain amount were prohibited. **It is possible that a liquor licensee could circumvent a law proscribing only large contributions by financing a large number of small contributions ostensibly given by his friends and associates. Also, if many liquor licensees acted in concert and each made a small contribution to a particular candidate, it is conceivable that they could, as a group, accomplish what section 12a of the Liquor Control Act was intended to prevent.** We therefore hold that section 12a is not rendered unconstitutional by the fact that it prohibits small political contributions as well as large contributions.

Schiller Park, supra at 66 (emphasis added).

I find quite persuasive the analyses of these foreign jurisdictions and believe that they should play a significant role in our review, even though some of these decisions applied a lesser standard than strict scrutiny. The fundamental wisdom underlying these decisions is, in my opinion, impeccable and completely in accord with the strong presumption of constitutionality that we are to afford the acts of our General Assembly. Thus, because I believe that "members of the General Assembly are the best-positioned to determine the role that campaign contributions play on their personal decision-making process" (Green Party of Connecticut, 590 F.Supp. 2d at 326), and because even small contributions may give rise to the evil that the General Assembly intended to prevent by the enactment of Section 1513, I would conclude that Section 1513's ban on political contributions is narrowly drawn and tailored to the clear and compelling government interests in this case.

Further, the fact that the decisions of foreign jurisdictions upholding bans on contributions rely so strongly on the very real threat or appearance of corruption, makes an analysis under the fourth Edmunds prong all the more critical. That prong requires an inquiry into "policy considerations, including unique issues of state and local concern, and [their] applicability within modern Pennsylvania jurisprudence." Edmunds, 586 A.2d at 895 (quotation marks omitted). Certainly, many of the policy considerations articulated in Soto and other foreign jurisdiction cases have equal applicability to this case, as the above analysis makes clear. However, Edmunds also requires that we examine policy matters peculiar to our state and local concerns.

The controversy surrounding the Commonwealth's venture into gaming is no secret. The General Assembly did not enact the Gaming Act because it believed the citizens of this Commonwealth were starved for entertainment.[13] Gaming was enacted to create jobs, assist the horse racing industry, promote commerce and tourism, provide tax relief, and raise revenue, particularly in an era where it has proven difficult to raise revenue by other means. See 4 Pa.C.S. § 1102(2)-(6). In authorizing gaming, the General Assembly knowingly legitimized an activity "rife with evil," in the words of the New Jersey Supreme Court,[14] and fraught with the possibility that the Commonwealth would unwittingly become partnered with criminals.[15] Further, whatever financial benefit there is to be derived from gaming, the potential collateral social ills of this activity are certainly well known and of obvious concern to the citizens of this Commonwealth. Thus, it is of little surprise that the General Assembly articulated multiple "public policy purposes" emphasizing the need for

[13] However, the General Assembly did note an entertainment value to gaming. 4 Pa.C.S. § 1102(2).

[14] Knight v. City of Margate, 431 A.2d 833, 842 (N.J. 1981).

[15] See Soto, supra at 1098.

close and exacting regulation of the gaming industry in order to achieve the General Assembly's primary goal of protecting the public. 4 Pa.C.S. § 1102(1), (5), (7)-(11).

"The importance of the governmental interest in preventing [corruption of elected representatives through the creation of political debts] has never been doubted." First National Bank of Boston v. Bellotti, 435 U.S. 765, 788 n.26 (1978). Further, preventing the **perception** of corruption is an equally compelling state interest. Buckley, supra at 27; Nixon, supra at 389-90; McConnell, supra at 143, 150. Indeed, Section 1102(11), quoted earlier in this dissenting opinion and in the majority opinion, as a whole reflects these compelling state interests. In an era when recent actions by the General Assembly have engendered considerable controversy, where "pay to play" is a commonly known expression, and where public officials of high office have found themselves subject to federal corruption prosecutions, the necessity for the General Assembly to make every effort and to take every step to avoid even the appearance of corruption in the highly-charged theater of publicly-sanctioned "gaming" is apparent. I believe that the public requires no less than the protections provided by Section 1513.

Here, where Section 1513's limitation on free speech and association rights involves only an "attenuated" form of speech and association, permitting the free expression of other, more direct, and wide-ranging forms of speech and association; where the classes of persons affected by the infringement are narrowly drawn and reasonably defined; where the Commonwealth's interests are indeed compelling; and where the General Assembly is in the best position to determine whether a ban rather than a limitation on contributions satisfies its compelling interests, I believe that Section 1513 survives a constitutional review based on the strictest scrutiny.[16] In my opinion, there is no support for the conclusion that

[16] Neither is Petitioner entitled to relief under his Article 1, Sections 20 and 26 claims. I believe that Petitioner's discrimination argument (Section 26) is weak. Moreover, as the (continued…)

Section 1513 "'clearly, palpably, and plainly' violates the Constitution." Konidaris, 953 A.2d at1239. Accordingly, I dissent.

(…continued)
majority notes, Petitioner's Section 20 argument is undeveloped and "subsumed within his argument related to Article I, Section 7." Maj. slip op. at 7-8 n.8.