

United States Court of Appeals
for the First Circuit

No. 12-1233

KG URBAN ENTERPRISESS, LLC,
PLAINTIFF-APPELLANT,

v.

DEVAL L. PATRICK, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE
COMMONWEALTH OF MASSACHUSETTS, AND THE CHAIRMAN AND
COMMISSIONERS OF THE MASSACHUSETTS GAMING
COMMISSION, IN THEIR OFFICIAL CAPACITIES,
DEFENDANTS-APPELLEES,

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Response to Appellant's Motion for Expedited Consideration

Governor Patrick, the Chairman of the Massachusetts Gaming Commission, and the as-yet unnamed four other Commissioners of the Gaming Commission (collectively, the "Commonwealth") do not oppose the request by KG Urban Enterprises, LLC, to shorten the time for KG Urban to file its own initial brief. However, the Commonwealth requests that it be given the normal 30 days to file its response, i.e. until April 20, 2012, instead of the 26 days proposed by KG Urban.

The Commonwealth notes that KG Urban devotes most of the 15 pages of its motion to arguments on the merits of its appeal. Many of the assertions made by KG Urban are incorrect. The Commonwealth will address the merits of this appeal in its brief, however, rather than demonstrate the errors in KG's representations at this time.

In its motion, KG Urban asks the Court to adopt the following briefing schedule:

Appellant's Brief: March 21, 2012
(33 days after entry of the final judgment and order of dismissal from which KG Urban is appealing, which were entered on February 17, 2012);

Appellees' Brief: April 16, 2012 (26 days later); and

Appellant's Reply: April 30, 2012 (14 days later).

The Commonwealth respectfully requests that the Court instead adopt the following, slightly revised briefing schedule:

Appellant's Brief: March 21, 2012 (as proposed by KG Urban);

Appellees' Brief: **April 20**, 2012 (30 days later); and

Appellant's Reply: May 4, 2012 (14 days later).

It would not be appropriate to expedite the briefing schedule by allowing KG Urban to take 33 days to prepare and file its initial brief, while giving the Commonwealth only 26 days: KG Urban is challenging the constitutionality of certain provisions of the new Massachusetts gaming statute, the requested extension is needed to permit the Massachusetts Attorney General to properly address appellant's claims, and the Commonwealth's counsel has other commitments that will prevent him from completing the Commonwealth's brief without the requested extension. In contrast to KG Urban, which indicates in its motion that it is represented by at least five lawyers in this appeal, the Commonwealth is represented by a single assistant attorney general.

The other commitments of Commonwealth's counsel include, but are not limited to: (1) preparing for and on March 6, 2012, participating in oral argument before the Massachusetts Supreme Judicial Court in Beneficiaries of the Massachusetts Turnpike Toll Equity Trust v.

Massachusetts Turnpike Authority, no. SJC-10987, regarding constitutional challenges to certain turnpike tolls in a case seeking a \$440 million refund on behalf of a putative class; (2) in counsel's capacity as Appeals Coordinator for the Attorney General's Government Bureau, preparing for and participating in moot courts concerning four separate appeals during the week of February 27, 2012; (3) preparing and by March 23, 2012, serving summary judgment papers with the Middlesex Superior Court in Ten Persons of the Commonwealth v. Fellsway Development LLC, no. MICV2009-03934, regarding application of the anti-segmentation requirements of the Massachusetts Environmental Policy Act; (4) preparing for and participating in an argument tentatively scheduled by the Massachusetts Supreme Judicial Court in early April in Boston Medical Center Corp. v. Secretary of Executive Office of Health and Human Services, no. SJC-11139, regarding claims that plaintiffs' Medicaid payment rates were too low and that plaintiffs are entitled to \$193 million in damages; and (5) preparing and by April 12, 2012, filing the Commonwealth's brief with this Court in Hightower v. City of Boston, United States Court of Appeals for the First Circuit no. 11-2281, regarding claims that certain provisions of the Massachusetts firearms licensing statute violate the Second Amendment and the procedural due process requirements of the Fourteenth Amendment to the United States Constitution.

KG Urban will not be unfairly prejudiced if briefing of this appeal is completed on May 4 rather than on April 30, 2012.

WHEREFORE, the Commonwealth asks the Court to adopt the revised briefing schedule set forth above, under which the Commonwealth's brief will be due on April 20, 2012.

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February 27, 2012

Certificate of Filing and Service

I hereby certify that this document was filed through the Electronic Case Filing (ECF) system on February 27, 2012, and thus copies will be sent electronically by that system to counsel for all parties in the case, as follows: Paul D. Clement and Jeffrey M. Harris; Bancroft PLLC; 1919 M Street, NW, Suite 470; Washington, DC 20036; pclement@bancroftpllc.com.

/s/ Kenneth W. Salinger