

**DONOVAN FREMIN, STAN GUIDROZ,  
WILLIAM EDWIN JUDSON, JR., LUKE  
LABRUZZO, JR., RAWLSTON PHILLIPS,  
III, AND SALVADOR P. TANTILLO, III**

**DOCKET NO. C-725,007 DIV. 26**

**19<sup>TH</sup> JUDICIAL DISTRICT COURT**

**VERSUS**

**PARISH OF EAST BATON ROUGE**

**BOYD RACING, LLC, CHURCHHILL  
DOWNS LOUISIANA HORSERACING  
COMPANY, LLC, LOUISIANA DOWNS  
INVESTMENT COMPANY, LLC, AND  
OLD EVANGELINE DOWNS, LLC**

**STATE OF LOUISIANA**

**RULING**

On September 11, 2023, three separate motions were heard before the court. The first motion urged by Defendant, Churchill Downs Louisiana Horseracing Company, LLC ("Churchill Downs") was a Peremptory Exception of No Right of Action. In essence, Churchill Downs argued that the Plaintiffs did not have standing to bring this action. After argument, the court found that Plaintiffs, as registered voters of their respective parishes in the State of Louisiana, did have standing and overruled the exception. The second motion, again urged by Churchill Downs, concerned the admissibility of an affidavit attested to by Stacy Friedman, Plaintiffs' expert, in support of Plaintiffs' Motion for Summary Judgment. After argument, the court determined that the affidavit could be admitted by Plaintiffs in their Motion for Summary Judgment with the caveat that the court would be the sole determiner of all questions of law. The third and last motion was a Motion for Summary Judgment urged by Plaintiffs, Donovan Fremin, Stan Guidroz, William Edwin Judson, Jr., Luke Labruzzo, Jr., Rawlston Phillips, III and Salvador P. Tantillo, III, (hereinafter simply referred to simply and collectively as "Plaintiffs").

In their Motion for Summary Judgment, Plaintiffs contend that there is no genuine issue of material fact that:

- 1) a Declaratory Judgment should not be issued by this court finding that historical horseracing is a new form of gaming which was not specifically authorized by law prior to October 15, 1996, nor was it conducted prior to October 15, 1996;
- 2) Because historical horseracing is in fact a new form of gaming, pursuant to the Louisiana Constitution, Article 12, §6, (C)(1)(a) & (b), as amended in 1996, this

court should declare that no historical horseracing may be conducted in any parish of this state unless and until voters in that parish where historical horseracing is to be conducted approve such gaming by a majority vote;

- 3) That Defendants, Boyd Racing, LLC, Churchill Downs Louisiana Horseracing Company, LLC, Louisiana Downs Investment Company, LLC, and Old Evangeline Downs, LLC, (hereinafter referred to simply and collectively as "Defendants"), should be permanently enjoined from conducting historical horseracing in any parish in the State of Louisiana unless and until a referendum election approved by a majority of voters in that parish authorizes such gaming; and
- 4) As a corollary, Plaintiffs contend that there is no genuine issue of material fact that Act No. 437 of the 2021 legislative session should not be declared unconstitutional for purporting to authorize historical horseracing without prior voter approval in the parish where it is to be conducted, contrary to Article 12, §6 of the Louisiana Constitution.

After oral argument, the court took this matter under advisement to more fully consider the legal issues raised in Plaintiffs' motion.

**A. FACTUAL SUMMARY:**

In 1996, Article 12, §6 of the Louisiana Constitution was amended by adding (C)(1)(a) & (b) which provides:

© Gaming, Gambling, or Wagering Referendum Elections.

(1)(a) No law authorizing a new form of gaming, gambling, or wagering not specifically authorized by law prior to the effective date of this Paragraph shall be effective nor shall such gaming, gambling or wagering be licensed or permitted to be conducted in a parish unless a referendum election on a proposition to allow such gaming, gambling, or wagering is held in the parish and the proposition is approved by a majority of those voting thereon.

(b) No form of gaming, gambling, or wagering authorized by law on the effective date hereof shall be licensed or permitted to be conducted in a parish in which it was not heretofore being conducted, except licensed charitable gaming which may be conducted in any parish provided it is conducted in compliance with the law, pursuant to state license or permit unless a referendum election on a proposition to allow such gaming, gambling, or wagering in held in the parish and the proposition is approved by a majority of those voting thereon. (Emphasis supplied.)

This provision in the Louisiana Constitution requires voter approval in any parish that seeks to permit any form of gaming that had not been in existence in that respective parish as of the effective date of the amendment to the Constitution, October 15, 1996. The general purpose of this

amendment to the Louisiana Constitution was to prevent the overall expansion of *new forms of gaming* and the expansion of previously authorized forms of gaming *into new areas* without a vote of the people.<sup>1</sup> (Emphasis supplied.)

In 2021, the Louisiana Legislature, in Act No. 437, (“HHR Act”), amended and added to the law on pari-mutuel wagering to include wagering on historical house racing for the first time. Historical horse racing was defined in the HHR Act, in pertinent part, as “wagers placed on horse races previously run.”<sup>2</sup> The HHR Act further provided that historical horse racing, which is now considered a part of pari-mutuel wagering, is permitted and authorized at licensed off-track wagering facilities.<sup>3</sup>

#### **B. CONTENTIONS:**

Plaintiffs overall argument is that historical horseracing is a new form of gaming, not in existence prior to the effective date of the amendment to Article 12, §6 of the Louisiana Constitution. They buttress this argument on a number of factors. First, if historical horseracing was specifically authorized by law prior to October 15, 1996, then why was there any necessity for the legislature to enact the HHR Act which specifically allowed wagers on horse races previously ran at off-track wagering facilities. Plaintiffs submit that Defendants can point to no law authorizing historical horseracing prior to 2021. In fact, Plaintiffs argue, the first patent on any machine used in connection with historical horseracing was not even applied for until 1998. No state even had historical horseracing until 2000, when it first appeared at Oakland Park in Arkansas.

Defendants conversely argue that historical horseracing is encompassed within the arena of pari-mutuel wagering. Defendants point to Act No. 203, passed by the Louisiana Legislature in 1987, which, for the first time, authorized pari-mutuel wagering at off-track wagering facilities. Pursuant to Act 203, activities to be conducted at the off-track wagering facilities are described as “live simulcast of races from the host track.” Defendants contend that this shows that wagering on horseracing was in existence prior to 1996 and therefore not subject to Article 12, §6 of the Louisiana Constitution as amended in 1996.

---

<sup>1</sup> *Castille v. Old Evangeline Downs, LLC*, 2005-1251 (La. App. Cir. 4/5/06), 927 So. 2d 598, 602

<sup>2</sup> La. R.S. 4:143 (4)

<sup>3</sup> La. R.S. 4:213

C. ANALYSIS:

As in *Castille v. Old Evangeline Downs, L.L.C.*, I must presume that the legislature chose the phrase “was not heretofore being conducted” for a specific reason.<sup>4</sup> In *Castille*, the Third Circuit spent a great deal of time evaluating the intended effect of the amendments to Article 12, §6 of the Louisiana Constitution in 1996. Reviewing Attorney General Opinions, the Court determined that the above phrase meant that if a particular form of gaming had been legally conducted in the past, that form of gaming could be conducted after the amendment without requiring a referendum.<sup>5</sup>

So, is Defendant’s argument correct? Does pari-mutuel gaming encompass historical horseracing? Plaintiffs have pointed out that if passage of Act 203 in 1996 included historical horseracing then why enact Act No. 437 to specifically allow for this form of gaming? Plaintiffs contend that courts and attorney general opinions in other jurisdictions have found historical horse racing or instant racing is not pari-mutuel wagering because, among other reasons, historical horse racing participants are not betting on the same race and sharing the same pool or stakes with the odds and pay-outs determined on the betting or pool on that particular race. *Family Trust Fund v. Ky Horse Racing*, 620 SW. 3d 595, 601 (Ky. 2020) (Patrons in historical horse racing ‘are not establishing odds with patrons wagering on the same races’. Emphatically, such patrons are not among themselves as requires by pari-mutuel wagering); *Wyoming Downs Rodeo Events, LLC v. State*, 134 P.3d 1223, 1230 (Wyo.2006) (We are dealing with a slot machine that attempts to mimic traditional pari-mutuel wagering. Although it may be a good try, we are not so easily beguiled.”)

This court is of the opinion that historical horseracing wagering is a new form of gaming and falls under the protections afforded by Article 12, §6 of the Louisiana Constitution, as amended. It is clear that this form of gaming is an expansion of “live simulcast of races from the host track” as contemplated in Act No. 203 in 1996. Further, if Act No. 203 already included historical horseracing, then why pass Act No. 437 in 2021?

The court is also persuaded by the fact that machines used to facilitate historical horseracing did not appear in any gambling facility until 2000. Clearly, both the passage of Act No. 437 in 2021 and the actions by Defendants in permitting wagering on historical horseraces are directly contrary

---

<sup>4</sup> *Castille v. Old Evangeline Downs, LLC*, 2005-1251 (La. App. Cir. 4/5/06), 927 So. 2d 598, 602

<sup>5</sup> *Id* at pg. 602, 603.

to the overall purpose of Article 12, §6 of the Louisiana Constitution, as amended - to prevent overall expansion of gaming without a vote of the people.


For these reasons and considerations;

**IT IS HEREBY ADJUDGED, ORDERED AND DECREED** that a there is no genuine issue of material fact, and the court does hereby declare and find that:

1. Historical horseracing is a new form of gaming which was not specifically authorized by law prior to October 15, 1996;
2. No historical horseracing may be conducted in any parish of this state unless and until voters in that parish where historical horseracing is to be conducted approve such gaming by a majority vote pursuant to Article 12, §6 of the Louisiana Constitution; and
3. Act No. 437 of the 2021 legislative session is unconstitutional.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the issuance of a permanent injunction in favor of Plaintiffs, Donovan Fremin, Stan Guidroz, William Edwin Judson, Jr., Luke Labruzzo, Jr., Rawlston Phillips, III and Salvador P. Tantillo, III, and against Defendants, Boyd Racing, LLC, Churchill Downs Louisiana Horseracing Company, LLC, Louisiana Downs Investment Company, LLC, and Old Evangeline Downs, LLC, enjoining Defendants from conducting historical horseracing in any parish unless and until historical horseracing receives approval from a majority of voters residing in the affected parish, is pretermitted pending a trial on this matter.

**THIS DONE, READ AND SIGNED** in Chambers at Baton Rouge, Louisiana, this 23<sup>rd</sup> day of February, 2024. Judgment to be signed in accordance with this ruling upon its filing and submission to this court.

  
Richard "Chip" Moore, III  
Judge, 19<sup>th</sup> Judicial District Court  
Parish of East Baton Rouge  
State of Louisiana

I HEREBY CERTIFY THAT ON THIS DAY A COPY OF THE WRITTEN REASONS FOR JUDGMENT / JUDGMENT / ORDER / COMMISSIONER'S RECOMMENDATION WAS MAILED BY ME WITH SUFFICIENT POSTAGE AFFIXED. SEE ATTACHED LETTER FOR LIST OF RECIPIENTS.

DONE AND MAILED ON February 28, 2024

  
Bridget Carter  
DEPUTY CLERK OF COURT