

19TH JUDICIAL DISTRICT COURT
FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

DOCKET NUMBER:

DIVISION:

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

VERSUS

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

FILED

DEPUTY CLERK

PETITION FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiffs Donovan Fremin, Stan Guidroz, William Edwin Judson, Jr., Luke Labruzzo, Jr.,
Rawlston Phillips, III and Salvador P. Tantillo, III, through undersigned counsel, respectfully
submit this Petition for Declaratory Judgment and Injunctive Relief and allege as follows:

1.

Plaintiffs are residents of parishes where historical horse racing is currently conducted, or
where it is anticipated it will be conducted, at offtrack wagering facilities. In none of these
parishes have historical horse racing been approved by majority of the voters of the parishes as
required by the Louisiana Constitution for a new form of gaming, like historical horse racing, to
be constitutional and legal.

2.

Plaintiffs herein are the following:

- A. Donovan Fremin who is a resident of Lafourche Parish;
- B. Stan Guidroz who is a resident of Lafayette Parish;
- C. William Edwin Judson, Jr. who is a resident of Jefferson Parish;
- D. Luke Labruzzo, Jr. who is a resident of Jefferson Parish;
- E. Rawlston Phillips, III who is a resident of West Baton Rouge Parish; and
- F. Salvador P. Tantillo, III who is a resident of St. Tammany Parish.

3.

The following parties are named Defendants herein:

- A. Boyd Racing, LLC d/b/a Delta Downs Racetrack Casino & Hotel (“Boyd Racing”);
- B. Churchill Downs Louisiana Horseracing Company, LLC d/b/a Fairgrounds Racehorse and Slots (“Churchill Downs”);
- C. Louisiana Downs Investment Company, LLC (“Louisiana Downs”); and
- D. The Old Evangeline Downs, LLC d/b/a Evangeline Downs Racetrack and Casino (“Evangeline Downs”).

4.

In 1996, the Louisiana Constitution was amended by adding Paragraph (C)(1)(a) & (b) to Article 12 Section 6 and which provides as follows:

(C) 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 is held in the parish and the proposition is approved by a majority of those voting thereon.**

La. Constitution, Art. 12 §6(C)(1)(a) & (b) (emphasis added).

5.

The above provisions in the Constitution require voter approval in a referendum when there is a new form of gaming not specifically authorized by law before the effective date of the amendment which was October 15, 1996 or previously conducted prior to October 15, 1996. The general purpose of this amendment to the Louisiana Constitution was to prevent the overall expansion of gaming without a vote of the people.

6.

Different forms of gaming bring advantages and disadvantages to a parish and a parish through its voters should be able to decide whether those advantages outweigh the disadvantages such that the gaming should be allowed. This is especially true with historical horse racing which provides virtually no tax revenues to local communities and is done through rapid play machines which have the look and feel of slot machines, with little to no distinction.

7.

In 2021, the Louisiana Legislature in Act No. 437 amended the laws on pari-mutuel wagering to include wagering on historical horse racing for the first time (the “2021 HHR Act”). *See* La. R.S. 4:143(9). Historical horse racing was defined in the 2021 HHR Act in pertinent part as “wagers placed on horse races previously run.” *See* La. R.S. 4:143(4). The 2021 HHR Act further provides that historical horse racing, which is now considered a part of pari-mutuel wagering, is permitted and authorized at licensed offtrack wagering facilities. LA. R.S. 4:213.

8.

Historical horse racing 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. No parishes in Louisiana have approved historical horse racing by a majority of those voting thereon. There was no betting anywhere in Louisiana prior to 2021 on horse races which were previously run.

9.

In fact, historical horse racing which is also called instant racing in certain other jurisdictions was not conducted anywhere in the United States until early 2000 when it was first allowed in Oaklawn Park in Arkansas. Historical horse racing allows bettors to place bets on slot machine like devices which use a library of old horse races to select the winning combination without identifying the particular horse.

10.

Defendants Boyd Racing, Churchill Downs, Louisiana Downs, and Evangeline Downs (collectively the “Racetrack Defendants”) are currently conducting and/or it is anticipated that they will be conducting, historical horse racing at one or more of their offtrack wagering facilities.

11.

Plaintiffs object to any such historical horse racing in their respective parishes or any other parish unless and until it is approved by a majority of those voting thereon in that parish.

12.

By changing the definition of pari-mutuel wagering to include historical horse racing, the 2021 HHR Act added a new form of gaming, historical horse racing, which was not specifically authorized by law prior to October 15, 1996 nor was it conducted prior to October 15, 1996. Nowhere in the 2021 HHR Act does it provide that the law only applies and becomes effective in

parishes where voters have approved this new form of gaming by majority of those voting thereon as required by the Louisiana Constitution.

13.

Historical horse racing is not pari-mutuel wagering as that form of gaming was known on October 15, 1996 and prior to that time. Pari-mutuel wagering as that term was understood in 1996 and prior to that time was “a form of betting on horses in which those who bet on the winning horse share the total stakes, less a small per cent to the management.” *Gandolfo, et al. v. Louisiana State Racing Commission, et al.*, 78 So.2d 504, 510 (La. 1954) citing *Webster’s New International Dictionary (2nd Ed.)*.

14.

As 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 payouts determined based on the betting or pool on that particular race.

15.

The Louisiana Legislature should not be able to bypass the requirement of voter approval in the Louisiana Constitution for a new form of gaming simply by changing the definition of pari-mutuel wagering to encompass a new form of gaming.

16.

The historical horse racing machines do not even appear to show horse races. Bets can be made in a game by pressing “spin” within seconds after the previous game is over so there is no pooling of bets on the same race with other people or odds being determined based on the betting on the same race. The display monitors show for the games what would be typical of a slot machine and not a horse race.

17.

One of the Racetrack Defendants, Churchill Downs, on its webpage for its Louisiana offtrack wagering facilities does not even describe these machines as pari-mutuel wagering. Instead, Churchill Downs advertises that it has “VEGAS-STYLE GAMES” at certain of its offtrack wagering facilities with “casino slots game”.

18.

These so-called historical horse racing machines are not pari-mutuel wagering as such was understood by voters in 1996 and is a new form of gaming.

COUNT ONE

DECLARATORY RELIEF

19.

Plaintiffs adopt and incorporate herein by reference the allegations in the above paragraphs.

20.

In accordance with Louisiana Code of Civil Procedure Article 1871, et seq., Plaintiffs seek a declaratory judgment as follows:

- A. Declaring that historical horse racing 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 and which therefore requires voter approval in a referendum election in each Louisiana parish by a majority of those voting thereon in the parish before it may be legally conducted in that particular parish; and
- B. Declaring that the 2021 HHR Act is unconstitutional and null and void to the extent that it purports to permit historical horse racing in a parish that has not approved historical horse racing by a majority of those voting thereon.

21.

As provided by the Louisiana Code of Civil Procedure Article 1880, the Attorney General of the State of Louisiana will be served with a copy of this Petition so that he may be heard in this matter if he so chooses.

COUNT TWO

INJUNCTIVE RELIEF

22.

Plaintiffs adopt and incorporate herein by reference the allegations in the above paragraphs.

23.

In accordance with Louisiana Code of Civil Procedure Article 3601, Plaintiffs seek preliminary and permanent injunctive relief enjoining the Racetrack Defendants from conducting

historical horse racing in any parish in Louisiana unless and until voters for the parish by majority of those voting thereon in a referendum action approve such gaming.

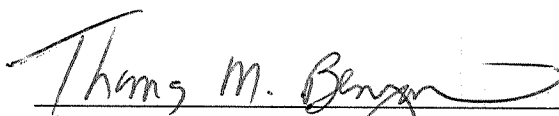
24.

Plaintiffs are entitled to this injunctive relief without a showing of irreparable harm as the conduct sought to be restrained is unconstitutional or unlawful. *Jurisich v. Jenkins*, 99-0076 (La. 10/19/99); 749 So.2d 597, 599.

Wherefore, Plaintiffs pray for judgment as follows:

- A. Declaring that historical horse racing is a new form of gaming which was not specifically authorized by law prior to October 15, 1996 nor previously conducted prior to October 15, 1996 and which therefore requires voter approval in any Louisiana parishes by a majority of those voting thereon in the parish before it may be legally conducted in that particular parish;
- B. Declaring that the 2021 HHR Act is unconstitutional and null and void to the extent that it purports to permit historical horse racing in a parish that has not approved historical horse racing by a majority of those voting thereon;
- C. Granting a preliminary and permanent injunction enjoining the Racetrack Defendants, Boyd Racing, Churchill Downs, Louisiana Downs, and Evangeline Downs from conducting historical horse racing in any parish in Louisiana unless and until voters for the parish by majority of those voting thereon in a referendum election approve such gaming; and
- D. Granting any and other general and equitable relief this Court may deem appropriate under the circumstances, including attorney's fees, and casting the Defendants with all costs of these proceedings.

BREAZEALE, SACHSE & WILSON, L.L.P.

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With Copy of Petition Only to:
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