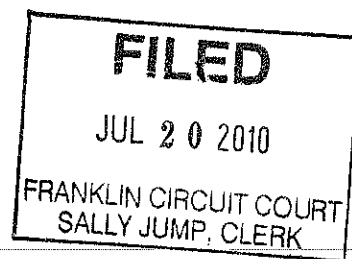


COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION II  
CIVIL ACTION NO. 10-CI-115A



**THE KENTUCKY HORSE RACING COMMISSION;**

**THE KENTUCKY DEPARTMENT OF REVENUE;**

**APPALACHIAN RACING, LLC;**

**CHURCHILL DOWNS INCORPORATED;**

**ELLIS PARK RACE COURSE, INC.;**

**KEENELAND ASSOCIATION, INC.;**

**KENTUCKY DOWNS, LLC;**

**LEXINGTON TROTS BREEDERS ASSOCIATION,  
LLC;**

**PLAYERS BLUEGRASS DOWNS, INC.; and**

**TURFWAY PARK, LLC**

**JOINT  
PETITIONERS**

**PETITION FOR DECLARATION OF RIGHTS**

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Come Joint Petitioners the Kentucky Horse Racing Commission (the "Commission"), the Kentucky Department of Revenue (the "Department"), and Appalachian Racing, LLC, Churchill Downs Incorporated, Ellis Park Race Course, Inc., Keeneland Association, Inc., Kentucky Downs, LLC, Lexington Trots Breeders Association, LLC, Players Bluegrass Downs, Inc., and Turfway Park, LLC (collectively the "Associations"), by counsel, and submit this petition for a declaration of rights pursuant to KRS 418.020.

**PARTIES**

1. The Kentucky Horse Racing Commission is "an independent agency of state government [responsible for] regulating the conduct of horse racing and pari-mutuel wagering on

horse racing.” KRS 230.225(1). The Commission is vested “with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted,” KRS 230.215(2), including “regulations governing and ~~regulating mutuel wagering on horse races under what is known as the pari-mutuel system of~~ wagering,” KRS 230.361(1).

2. The Kentucky Department of Revenue is the state agency responsible for “exercis[ing] all administrative functions of the state in relation to the state revenue and tax laws.” KRS 131.030(1). The Department is specifically charged with administering, collecting, and enforcing the excise tax on pari-mutuel wagering set forth in KRS 138.510. KRS 138.530(1).

3. Appalachian Racing, LLC, operates a standardbred racetrack located in Prestonsburg, Kentucky, and currently accepts pari-mutuel wagers pursuant to a license from the Commission.

4. Churchill Downs Incorporated operates a thoroughbred racetrack located in Louisville, Kentucky, and currently accepts pari-mutuel wagers pursuant to a license from the Commission.

5. Ellis Park Race Course, Inc., operates a thoroughbred racetrack located in Henderson, Kentucky, and currently accepts pari-mutuel wagers pursuant to a license from the Commission.

6. Keeneland Association, Inc., operates a thoroughbred racetrack located in Lexington, Kentucky, and currently accepts pari-mutuel wagers pursuant to a license from the Commission.

7. Kentucky Downs, LLC, operates a thoroughbred racetrack located in Franklin, Kentucky, and currently accepts pari-mutuel wagers pursuant to a license from the Commission.

8. Lexington Trots Breeders Association, LLC, operates a standardbred racetrack located in Lexington, Kentucky, and currently accepts pari-mutuel wagers pursuant to a license from the Commission.

9. Players Bluegrass Downs, Inc., operates a standardbred racetrack located in Paducah, Kentucky, and currently accepts pari-mutuel wagers pursuant to a license from the Commission.

10. Turfway Park, LLC, operates a thoroughbred racetrack located in Florence, Kentucky, and currently accepts pari-mutuel wagers pursuant to a license from the Commission.

#### **JURISDICTION AND VENUE**

11. This Court has jurisdiction to render judgment in this agreed case pursuant to KRS 418.020 and KRS 23A.010. The controversy set forth is real and these proceedings are instituted in good faith to determine the legal rights of the parties under the agreed facts set forth herein.

12. Venue in this case is proper in this Court pursuant to, *inter alia*, KRS 418.020, KRS 452.480, KRS 230.330, KRS 13B.140(1), KRS 131.370(1), and KRS 13A.337(4).

13. To fulfill the requirements of KRS 418.020, this petition for declaration of rights has been verified by affidavits by authorized representatives of each party attached hereto as collective **Exhibit A**.

#### **STATEMENT OF THE CASE**

14. On January 5, 2010, the Attorney General of the Commonwealth of Kentucky issued an advisory opinion, attached as **Exhibit B**, addressing the legality of wagering on

historical horse races, sometimes called “Instant Racing.” The Attorney General concluded that, “[t]o the extent Instant Racing is not permissible in Kentucky, it is because Instant Racing does not constitute pari-mutuel wagering under the current administrative regulations.” Ky. OAG 10-001, p. 4. The Attorney General’s opinion was premised on the belief that the Commission’s then-existing administrative regulations “contemplate live races only.”

15. On July 20, 2010, the Commission approved new and amended administrative regulations (the “Regulations”). Among other things, the Regulations expressly authorize the Commission to permit licensed associations to offer pari-mutuel wagering on historical horse races. The Regulations are attached as **Exhibit C**.

16. On the same day, the Department amended its pari-mutuel tax collection form to include revenues from pari-mutuel wagering on historical horse races. A copy of the revised form is attached as **Exhibit D**.

17. One or more of the Associations intend to apply to the Commission for approval to offer pari-mutuel wagering on historical horse races upon the effectiveness of the Regulations.

18. Petitioners submit this agreed case, pursuant to KRS 418.020, for a declaration from this Court regarding the legality of the Regulations and the proposed form of taxation. An “advance determination” is appropriate because it “would eliminate or minimize the risk of wrong action or mistakes by . . . the parties” and because the issues presented are of “immediate, prominent, and non-academic concern to the public.” *McConnell v. Commonwealth*, 655 S.W.2d 43, 45-46 (Ky. App. 1983).

19. The legality of the Regulations and the proposed form of taxation are immediate and prominent issues of public concern. The Commission and Department believe that pari-mutuel wagering on historical horse races may generate additional tax revenue for the

Commonwealth and improve the financial viability of Kentucky's signature horse industry. Advance determination will provide the public entities assurance that commitment of the resources required to implement these regulations will not be wasted, and that if the public entities take the costly steps necessary for implementation, the tax revenues and benefits to the industry will in fact be realized.

20. The Associations will be required to make a substantial financial commitment in order to offer pari-mutuel wagering on historical horse racing, including the purchase, installation, and approval of new terminals. Before making this investment, the Associations need to confirm: (1) the validity of the Regulations (to ensure that they may proceed without being subject to any legal penalties, including criminal liability under Kentucky's penal code) and (2) the proper form of taxation for wagering on historical horse races.

21. The immediacy of these issues is underscored by the financial challenges currently facing several of the Associations. The new revenue from wagering on historical horse races is important to the financial viability of these Associations and, consequently, to the future of the horse racing industry in Kentucky. The Associations have an immediate and pressing need for a determination whether the Regulations and proposed form of taxation are valid.

22. Accordingly, Petitioners seek a declaration that:

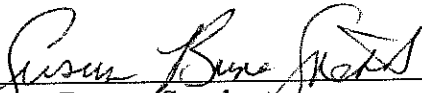
- (A) The Regulations are a valid and lawful exercise of the Commission's statutory authority to regulate pari-mutuel wagering of horse racing under Chapter 230 of the Kentucky Revised Statutes;
- (B) The licensed operation of pari-mutuel wagering on historical horse races, as authorized by the Regulations, does not contravene

statutory prohibitions on gambling contained in Chapter 528 of the Kentucky Revised Statutes, because it is an authorized form of pari-mutuel wagering exempted pursuant to KRS 436.480; and

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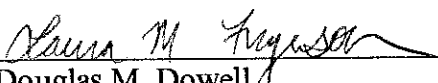
(C) The Department's determination that revenue generated by pari-mutuel wagering on historical horse races is subject to the pari-mutuel tax, as set forth in KRS 138.510, is a valid and lawful exercise of its statutory authority to interpret and enforce the tax laws of the Commonwealth.

Wherefore, Petitioners pray that the Court establish an expedited briefing schedule, hear and determine this matter, and declare the rights of the parties on the issues identified above pursuant to KRS 418.020.

  
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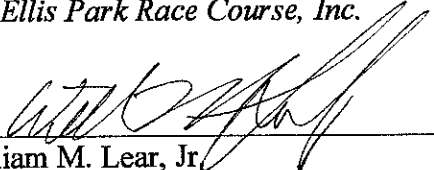
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