IN THE SUPREME COURT OF FLORIDA

DEPARTMENT OF BUSINESS REGULATION,

Appellant,

vs. CASE NO. 73,119

CLASSIC MILE, INC., ETC., ET AL.,

Appellees.
_____/

THE GALAXY PROJECT, INC., ETC.,

Appellant,

vs. CASE NO. 73,121

CLASSIC MILE, INC., ETC., ET. AL.,

Appellees.
_____/

APPEAL FROM THE DISTRICT COURT OF APPEAL FOR THE FIRST DISTRICT OF FLOIRDA

APPELLANT DEPARTMENT OF BUSINESS REGULATION'S INITIAL BRIEF

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PRELIMINARY STATEMENT

In this Brief, the Appellants, Department of Business Regulation and The Galaxy Project, Inc., shall be referred to as "State" or "Galaxy", respectively. Appellee Classic Mile Inc., shall be referred to as "Classic Mile" and Appellee Anthony Altman shall be referred to as "Altman".

References to the Record on Appeal will refer to the record before the District Court of Appeal and will be designated by the prefix "R", followed by the appropriate page number. Reference to the trial transcript will be designated by the prefix "T", followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

During the 1987 session, the Florida Legislature passed Committee Substitute for Senate Bill 837 (CS/SB 837), which was later enrolled as Chapter 87-38, Laws of Florida. Section 13 of the Chapter, now codified as Section 550.355, Florida Statutes (1987), contains the provisions authorizing pari-mutuel simulcasting, which provisions are the subject of this appeal.

The above statute, which became law on May 22, 1987, permits the simulcasting of thoroughbred horseraces i.e., the simultaneous broadcasting of a thoroughbred horserace being conducted at another location, in counties which meet the following criteria:

> In any county in which there has been issued by the Division of Pari-mutuel Wagering of the Department of Business Regulation, as of January 1, 1987, two quarter horse racing permits, neither of which was utilized for racing prior to January 1, 1987, and only one jai alai permit; the Division of Pari-mutuel Wagering shall issue not more than one license in any qualifying county for the receipt and display of live thoroughbred horse races by simulcasting and for the acceptance of all legally authorized forms of pari-mutuel wagering on such races, which facility may not be located at the premises of any other pari-mutuel wagering permitholder licensed under Chapters 550 and 551, Florida Statutes.

On June 30, 1987, Classic Mile and Altman filed suit in the Circuit Court of Leon County, Florida, challenging the facial constitutionality of Section 550.355, Florida Statutes (1987). The Complaint alleged that (1) the challenged statute was a local or special law, passed under the guise of a general law, without the benefit of public notice or county-wide referendum as required by the constitution and (2) that if the statute was a general law, it nevertheless classified counties on bases not reasonably related to the subject of the law. (R 1) The Complaint further alleged that Marion County was the only county falling within the classification scheme specified in the statutes. (R 2)

In its Answer to the Complaint, the State admitted that (1) Marion County was the only county falling within the statute's classification and (2) that no Notice of Intention to Seek Enactment of the statute had been published in the manner provided by general law, nor was the statute conditioned to become effective only upon approval by vote of the electors of the area affected. (R 23, 24)

On September 11, 1987, Galaxy filed a Petition for Leave to Intervene. (R 35) On October 22, 1987, the court entered an Order Granting Intervention. (R 137).

At the beginning of the trial below, counsel for

Classic Mile and Altman published a stipulation that was entered into among the parties which provided that:

1. Classic Mile, Inc., is a for-profit corporation organized and existing under the laws of the State of Florida,

2. Classic Mile is a permit holder of a quarter horse racing permit in Marion County.

3. Classic Mile's permit was not utilized for racing prior to January 1, 1987,

4. Anthony Altman, who is a Plaintiff, is a resident of Marion County, and at all times material to the case he was a duly qualified elector and a taxpayer in Marion County. Anthony Altman is also an employee of Classic Mile, Inc.

5. Marion County is the county in which there has been issued by the Division of Pari-mutuel Wagering of the Department of Business Regulation as of January 1, 1987, two quarterhorse racing permits, neither of which was utilized for racing prior to January 1, 1987, and only one jai alai permit,

6. Marion County is the only county in Florida which meets the above description.

7. Marion County is the only county in Florida which can ever meet that description,

8. No Notice of Intention to Seek the Enactment of Section 13 of Chapter 87-38 (Section 550.355, Florida Statutes (1987)) was ever published in the manner provided by general law, and

9. No referendum to approve Section 13 was ever conducted in Marion County. (T 20, 21).

On November 20, 1987, after receiving testimony and argument from the parties, the trial court upheld the validity of Section 13 of Chapter 87-38, Laws of Florida, and entered a written order containing detailed findings of fact and conclusions of law. In particular, the court ruled that the challenged provision was not a local or special law but was at least a general law of local application and was part of the state's comprehensive overall scheme for the regulation of pari-mutuel wagering. Additionally, the court found that the legislation would materially affect the counties and citizens of the state since broadcasts of races would originate from around the state; proceeds from pari-mutuel wagering at the simulcast facility would contribute to the tax proceeds distributed to all counties in the state; and, the administration of the simulcast pari-mutuel wagering activity would have impact in areas both within and outside of Marion County. Also, the trial court found that the wagering

conducted through the facility would affect the odds at the transmitting track, the size of the pools at the transmitting track, and the handle of the transmitting track. Finally, the circuit court specifically found that the selection of Marion County was a reasonable exercise of the state's police power in that Marion County has a nexus with the horseracing industry, has already voted by referendum to allow pari-mutuel activities, and is a national and statewide center for the business activities of the horseracing industry.

A timely appeal was taken by Classic Mile and Altman to the First District Court of Appeal. In an opinion dated September 1, 1988, and published at 13 FLW 2036, the district court held that Section 550.355, Florida Statutes, was unconstitutional because it was a special act in the guise of a general law and was enacted without published notice or the provision for a referendum, in violation of Article III, §10, of the Florida Constitution. Additionally, the district court ruled that the legislation violated Article III, §11(b), of the Florida Constitution because there was "no reasonable relationship between the express class characteristics enumerated in the statute and the purpose of the legislation". 13 FLW at 2036.

Separate appeals were timely filed in this court by

the Department and by Galaxy, pursuant to 9.030(a)(1)(A)(ii), Florida Rules of Appellate Procedure, and the appeals were consolidated at the request of the parties.

SUMMARY OF ARGUMENT

The District Court erred in applying an overly restrictive test to analyze whether Section 550.355, Florida Statutes, involved the exercise of a state function and was therefore general law. The emphasis of this court in resolving previous cases addressing this issue is whether the legislation involves the exercise of a soverign power and involves matters of statewide impact. The fact that legislation is implemented by a state agency and is part of a comprehensive statewide regulatory scheme has been important in determining whether the legislation involved a state function and would constitute general law. Finally, the key concern is whether the local notice or referendum required for special laws under Article III Section 10 of the Florida Constitution would, in light of the above, be a futile gesture.

The legislation challenged here is part of a pervasive state regulatory scheme governing pari-mutuel wagering. Because of its impact on state revenue and the funding of statewide programs, it has been repeatedly recognized to be a matter of paramont state concern. The challenged section in this appeal, Section 550.355, Florida Statutes, is part of this overall regulation and clearly has statewide impact. A review of the legislation shows that it sets up a new form of pari-mutuel wagering and this activity necessarily involves statewide impact

through the distribution of revenue, the inter-county electronic transmission of races, the inter-county combination of wagering pools between a broadcast and transmitting facility, and the simultaneous regulation by the Department of activities at both the broadcasting and receiving tracks.

The pari-mutuel wagering activities authorized by the challenged legislation is even more of a state function and less of a local matter then the general regulation afforded to other pari-mutuel activities. Unlike most pari-mutuel wagering licenses, the simulcast licensure is issued and renewed without the requirement of a local referendum. Because it materially effects, indirectly or directly, all of the counties and citizens of this state, it is a state function for which a requirement of local notice or referendum would be a futile gesture.

By focusing only on the closed nature of the class and the express classification language the District Court failed to fairly evaluate the constitutionality of the challenged statute. A review of the purpose of the legislation as determined by the language of Chapter 87-38, Laws of Florida, and in the context of the regulatory scheme under Chapter 550 of the Florida Statutes, demonstrates the classification of one county, and Marion County in particular, was reasonable.

Article III, Section 11(b), of the Florida Constitution, merely requires that classifications of counties be reasonably related to the purposes of the legislation. The fact that a

ARGUMENT

I. IN THE CONTEXT OF A PERVASIVE REGULATORY SCHEME DESIGNED TO PROMOTE STATE REVENUE, THE SIMULCAST LICENSURE CREATED BY SECTION 550.355, FLORIDA STATUTES, AFFECTS THE PEOPLE OF FLORIDA GENERALLY AND IS PROPERLY VIEWED AS A GENERAL LAW EXERCISING A STATE FUNCTION.

By applying an overly restrictive analysis based upon whether the challenged statute involved a proprietary or property interest of the state, the district court failed to give fair consideration as to whether the challenged statute was a general law because it involves the exercise of a state function. Carefull review of the existing law shows that the analysis of whether a law may be deemed to be general is not limited simply to whether it involves a proprietary interest of the state. Instead it is directed to whether the legislation involves statewide impact so that the notice requirements in the constitution would be rendered futile. The department submits that, in light of a statewide impact of the simulcast licensure legislation, in the overall context of the regulatory scheme

under Chapter 550 of the Florida Statutes demonstrates that this legislation is clearly an exercise of a state function and should be deemed to be a general law.

In addressing the notice requirements under Article 3, Section 10, of the Florida Constitution, our courts have long recognized that some laws, because they involve an exercise of a state function or instrumentality, are general in character even though they may be local in application. Department of Legal Affairs v. Sanford Orlando Kennel Club, 434 So.2d 879 (1984); State ex rel Landis v. Harris, 163 So. 237, 240 (1935). In deeming these laws to be general and thereby excluding them from the notice requirements of Article III, Section 10, of the Florida Constitution, the reasoning seems to be that notice would be futile where the legislation involves the exercise by the state of its soverign powers and the legislation will involve a statewide impact. State v. Florida State Turnpike Authority, 80 So.2d, 337; Cantwell v. St. Petersburg Port Authority, 21 So.2d 139(Florida 1945). Implicit in this analysis is the notion that since the legislation will impact the people of the state generally, it is the statewide legislative body which should have the authority to act.

In Cantwell, for example, the challenged legislation authorized the creation of an authority to grant franchises for

the construction and maintenance of bridges, tolls, terminals, and highways, on bays and lagoons bordering on or connected to the Gulf of Mexico. In response to a challenge that the legislation was a general or special law, the court held that it was a general law because the citizens of the state were directly or indirectly affected by the action even though it did not universally apply to all counties of the state. Similarly, in Florida State Turnpike Authority, this court was asked to consider whether legislation was local or special because it only affected certain counties. The legislation authorized the creation of an authority to issue bonds for a portion of a turnpike to be built in a small part of the state. Additionally, the purpose of the legislation was eventually to build a highway running from Dade to Duval county. In holding that it involved a state function and was therefore general law, the court noted that it had a statewide impact by affecting tourism and travel throughout the state. Furthermore, the court noted the futility of giving local notice and requiring a series of special laws on a piecemeal basis for each portion of the construction. More recently, this court was called upon to again consider whether a law was general or special in St. John's River Water Management v. Deseret Ranches of Florida, Inc., 421 So.2d.1067(Florida 1964).

In Deseret, legislation designating an area of the state as a water basin and applying only to a very small portion of the state, was challenged as a special law enacted without providing local notice as required by our constitution. In holding that legislation constitutional as a state function, and therefore a general law, this court specifically relied upon the fact that a legislation was part of an overall state regulatory scheme to manage water resources which regulation affected all the people of this state. Although some of the early cases involving the state function issue did take the approach apparently followed by the district court below and limit its application to matters involving state property or a state proprietary interest, the more recent cases noted above are not so restrictive. In St. John's the legislation did not involve the exercise of authority by a state agency nor did it involve state property. Nevertheless, the legislation was viewed as involving a state function because it had statewide impact. Similarly, in both Cantwell and Florida State Turnpike, the challenged legislation did not involve state property but was viewed a general law because it involved a state function having statewide impact and the notion of giving local notice as provided by the constitution for special laws would be futile. Given the statewide impact which will clearly result from the

simulcast licensure legislation at issue here, as shown by the language by the legislation when viewed in the context of the overall regulation of pari-mutuel wagering, this legislation likewise involves a state function and is general law.

Although general law currently provides for distribution of revenue to both state and local governments, the taxes generated by pari-mutuel wagering are subject to absolute preemption by the state. Art. VII, §7, Fla. Const. In a very real sense, this revenue is property belonging to all the people of the state. Furthermore, the collection of this revenue has repeatedly been recognized as a matter exclusively subject to state control and having impact on statewide programs. Department of Legal Affairs at 881,883. Similar to the legislation at issue in St. Johns, pari-mutuel wagering activities are the subject of a comprehensive set of regulations which specify when, where and how races and wagering will be conducted. Under this regulatory scheme, the state has been given broad discretion in granting franchises which are exclusive as are arbitrarily exclusive. West Flagler at 9; Hialeah Race Course v. Gulfstream Park Racing Association, 37 So.2d 692 (1948). These franchises are granted by the state and are administered by a state agency. Similarly, as specifically noted by the trial court in detailed findings of fact, the

simulcast licensure legislation has statewide impact because it materially affects the citizens of the state, necessarily involves multi county operations, and is part of the overall regulatory scheme for pari-mutuel wagering.

On its face, the challenged legislation unequivocablly supports the trial court's findings. The legislation necessarilly requires the receipt of racing broadcasts from another county or from other counties. Ch 87-38 §13(2)(9)(a), Laws of Fla. In the acceptance of pari-mutuel wagers, it necessarilly requires that the simulcast facility operate through wagering pools established and managed by a transmitting facility or facilities located in other counties. Ch 87-38, §13(3) Laws of Fla. Furthermore, it provides for combining these wagering pools resulting in a direct impact on the odds and the payoff for wagering at both the broadcast and the receiving facilities. Ch 87-38, §13 (2) Laws of Fla. Finally, it necessarilly provides for the contribution of revenue both to the state and to each of the counties throughout the state. Ch 87-38, §13(5) Laws of Fla. Given the fact that this legislation will impact all of the counties of the state in the distribution of revenue and will necessarilly impact both Marion County and any of the counties of the state where thoroughbred races are broadcast through the simulcast facility,

the local notice required under the constitutional section at issue here would be a futile act. Perhaps more telling as to the characterization of htis legislation as involving a state function, however, is the way in which the simulcast licensure legislation differs or goes beyond the degree of state control found generally in pari-mutuel wagering legislation.

A pari-mutuel wagering license generally authorizes the conduct of racing and pari-mutuel wagering. §550.50, Fla. Stat. Applicants wishing to obtain a pari-mutuel license must first be investigated by the division, and if found to meet requirements relating to good moral character, are issued a pari-mutuel wagering permit. With rare exception, they may notconduct pari-mutuel racing and are not issued a pari-mutuel license unless and until a local referendum has been held approving the license. §550.05-.07, Fla. Stat. Notwithstanding the strong state interest in this area, this procedure recognizes a limited interest for the local citizenry before allowing the operation of a racetract and the allowing of pari-mutuel wagering. Appellant would suggest that the local referendum required under pari-mutuel law has the same goal as the local notice requirements under Article 3, Section 10 of the Florida Constitution. Compared to the general pari-mutuel wagering procedures, however, the simulcast licensure created by

Section 550.355, Florida Statutes, establishes an even greater state interest.

As noted previously, the simulcast legislation does not allow the operation of race track. Instead, it authorizes only a passive facility which serves as a conduit for the acceptance of pari-mutuel wagers which are managed by the transmitting track. The simulcast facility is essentially an electronic "branch bank" for receipt of the pari-mutuel wagers. Consistent with this characterisation of the simulcast facility, the challenged legislation clearly specifies that the simulcast applicant to receive a <u>license</u> which is issued and reviewed without any intermediary requirement of a permit and a local referendum requirement. See Ch 87-38, §13(2) Laws of Fla. In essence, this legislation authorizes a new classification for pari-mutuel facility which will have broad statewide impact but will have diminished local impact. Even if legislation dealing with pari-mutuel wagering may not be deemed to be a state function, the unique characteristics of the simulcast licensure has all the elements of a state function and should be viewed as a general law.

II. GIVEN THE PURPOSE OF THE SIMULCAST LEGISLATION, SECTION 550.355, FLORIDA STATUTES, IT WAS REASONABLE TO CLASSIFY MARION COUNTY AS THE SITUS FOR THE SIMULCAST LICENSE AND TO LIMIT THIS ACTIVITY TO A SINGLE LOCATION.

By focusing only on the closed nature of the classification, and the express classification language of the legislation the opinion of the district court reflects a superficial analysis that does not fairly evaluate the constitutionality of this legislation. Furthermore the district court completely failed to consider the detailed findings of fact by the circuit court. A careful review of the purpose of the legislation, from the language of Chapter 87-38, Laws of Florida, and in the context of the existing pari-mutuel regulation under Chapter 550, Florida Statutes, and a consideration of the findings by the trial court, shows that the classification of one county, and Marion County in particular, was reasonable.

Article III, Section 11(b) of the Florida Constitution, provides that:

> In the enactment of general laws on other subjects, political subdivisions or other

> governmental entities may be classified only on a basis reasonably related to the subject of the law.

This constitutional provision is new in the 1968 Constitution and apparently has not been the subject of a reported appellate decision, other than the present case, nor was it at issue in the cases cited by the district court in its opinion. The existing case law has all been concerned with the language found in Article III, §§20 and 21 of the 1885 Constitution or with similar provisions contained in Article III, §§10 and 11(a) of the 1968 Constitution. The provisions in the 1885 Constitution prohibited special or local laws in a number of specifically enumerated cases and further required that legislation in these subject areas be "general and of uniform operation throughout the state". Article III, §§20 and 21, Fla. Const. (1885). The 1968 Constitution, in Article III, §11(a) achieved this same result by prohibiting "special law or general law of local application" in a number of enumerated areas. In turn, the cases interpreting these provisions under either of the state constitutions have been primarily concerned with whether challenged legislation created preferences or inequities which are not shared or similarly applied to all parties that are reasonably related by some characteristic which is the subject of the legislation. West Flagler Kennel

Club v. Florida State Racing Commission, 153 So.2d 5 (Fla. 1963); Ex Parte Wells, 21 Fla. 280, 312. The cases have consistently recognized that the uniformity of operation required by the Constitution is not equivalent to universality of operation so long as the distinctions inherent in the classification reasonably relate to the subject matter and every person brought under the law is affected by it in a uniform fashion. E.g. Sanford Orlando at 881. Again, the analysis has been directed to whether the challenged legislation sets up a classification which will afford some valuable benefit or privilege to some but not all similarly situated parties. See e.g. Cessary v. Second National Bank of North Miami, 369 So.2d 917 (1979) (special privilege to initiate high interest loans afforded to certain lenders but denied to others); Carter v. Norman, 38 So.2d 30 (Fla. 1948) (single licensee allowed to hold beverage license which benefit was denied to all other facilities located in similar areas in the city and county and in the state). Similarly, there have been a number of fairly recent cases involving pari-mutuel legislation where the same concern over the granting of a special privilege was addressed. In these cases, however, the analysis has often emphasized whether the legislative classification at issue created a closed class i.e., has

singled out certain parties for a privilege or benefit which will not ever be available to any other parties. Sanford Orlando; Biscayne Kennel Club v. Florida State Racing Commission, 165 So.2d 762 (1964), West Flagler.

In West Flagler, the challenged legislation allowed a financially troubled park to convert a dogracing permit in St. John's County to a harness racing permit in Broward County. The classification contained in the legislation was essentially a descriptive technique used to identify a single permittee to the exclusion of all other permittees throughout the state. Noting that the legislation set up a closed class, the court held it to be unconstitutional in violation of equal protection rights and in violation of Article III, §21 of the 1885 Constitution. Similarly, in Biscayne, this court upheld legislation which allowed certain permitholders to transfer their existing pari-mutuel wagering permits. In upholding the Constitution, this court specifically noted that it was potentially applicable to other permittees and was not arbitrary given the fact that the legislation was designed to increase state revenue, a purpose which was consistent with the classification used. Finally, in Sanford-Orlando, this court upheld pari-mutuel legislation which allowed certain harness permits at tracks which were less productive financially, to

convert to another form of racing. Recognizing that only one race track could, at that time, benefit from the legislation, this court nevertheless noted that:

> [t]he controlling point is that even though this class did in fact apply to only one track, it is open and has the potential of applying to other tracks. (Citations omitted).

Sanford-Orlando at 882.

In each of the above cases, the key issue was whether the challenged legislation would grant special benefits to certain existing permittees and deny them to others. Likewise, in each of these cases the challenge was brought under Article III, §11(a) of the 1968 Florida Constitution as its predecessor under the 1885 Constitution.

Contrary to the conclusion that might be derived from the above cases, however, Appellant would submit that, in proper circumstances, a closed class may be constitutionally permissible. Specifically, where the subject legislation is not one of those enumerated under Article III, §11(a) of the Florida Constitution, Appellant maintains that a closed class is constitutionally permissible if the classification reasonably relates to the subject of the law. In fact, a couple of early cases by this court addressing this issue have explicitly upheld legislation creating a closed class where the

classification was consistent with the purpose of the legislation. Bloxham v. Florida Central and Peninsular Railroad Co., 35 Fla. 65, 17 So. 902 (1885); Givens v. Hillsborough County, 35 So. 88 (1903).

In Bloxham, the state comptroller had brought suit to recover back taxes sought under legislation which authorized the collection of these taxes on railroad property which previously had erroneously mixxed taxation. The legislation had the effect of seeking taxes from only a single railroad. Rejecting the argument that it was a special law, this court held that it embraced all persons who were in a similar situation i.e., property owners who had failed to remit taxes, and therefore was a general law. Similarly, in Givens, legislation was enacted to validate certain previous county bonds which had been defectively issued. It was undisputed that the legislation would never have application except to a single county in a single bond issue. Rejecting the argument that it was a local bill, the court noted that even though the class may have only one member the classification reasonably related to the purpose of the bill, curing a defective bond issue. Perhaps most instructive for this appeal, however, is the case of Miami Beach Jockey Club Inc. v. State ex rel Wells, 227 So.2d 96 (1 DCA 1969).

In the above case, a competing permittee had challenged the constitutionality of legislation authorizing the issuance of a new type of permit which authorized summer thoroughbred racing. Among the issues raised was the allegation that it was a special or general law of local application because the act would never apply to more than one location in the state. Specifically, the legislation, which is now codified as Section 550.41(1), Florida Statutes, would only allow issuance of the summer thoroughbred permit "[w]hen there are three or more thoroughbred horse tracks operating under valid outstanding permits issued by the Division of Pari-Mutuel Wagering located within a radius of 100 miles of each other". Reversing the opinion of the trial court, the district court held that it was not a special law or a general law of local application. In reaching this conclusion, the court relied upon the broad discretion of the state in establishing classifications for the issuance of pari-mutuel licenses and specifically relied upon legislative language indicating that the intent of the act was to initiate a new type of racing activity and to set forth a new set of rules and prerequisites for the issuance of permits and licenses in this area. Likewise, the court relied upon this rationale for rejecting a challenge that the act was invalid because it authorized

issuance of a license without a local referendum. Appellant would submit that a review of the language contained in Chapter 87-38, Laws of Florida, in the context of the regulation under Chapter 550, Florida Statutes, would show that this legislation is designed to implement a new type of race permit and that it was reasonable to designate a single county for licensure of this new activity. At the outset, Appellant would note that the constitutional analysis of a challenged statute begins with the premise that the statute is presumptively valid. There is a strong judicial presumption in favor of constitutionality and all doubt must be resolved by the court in favor of the constitutionality of the statute. E.g. State v. Kinner, 398 So.2d 1360, 1363 (1981). A reviewing court is required to look for a reason to uphold the statute and to adopt any reasonable view that would do so. Tyson v. Lanier, 156 So.2d 833, 838 (1963). Additionally, it is well accepted that the Legislature has wide discretion in creating classification schemes and that the presumption of validity equally attaches to such classification schemes. E.g. Lewis v. Mathis, 345 So.2d 1066, 1068 (Fla. 1977). The focus of the reviewing court should not simply be on the express classification language, especially if this language would lead to an absurd result, but instead should be on the effect of the classification scheme both now

and in the future. E.g. Sanford Orlando at 882; West Flagler at 8. This seems especially apropos where the challenge is based on the fact that, notwithstanding the general nature of the classification language, it only has application to specific persons or localities. Finally, Appellant would submit that the classification language at issue here is not insidious but rather is typical of the classification schemes used by the Legislature throughout Chapter 550, Florida Statutes. A casual perusal of the chapter shows a tradition of indirect, even esoteric classifications rather than designation of specific tracks or locations used.

As reflected in the express language of paragraphs 1 and 2 of Section 13, Chapter 87-38, Laws of Florida, the intent of the challenged legislation is to initiate a new form of wagering known as simulcasting. It involves a new type of passive "branch bank" wagering, new concerns regarding the combining of wagering pools and distribution of revenue, and new concerns regarding the proper transmission and broadcast of racing activities. The intent of Section 13 should be determined by reading the rest of the provisions of Chapter 87-38, Laws of Florida, in para materia with the language of the challenged section. Each of the sections in the chapter are clearly designed to increase state revenue by increasing

the number of race dates and Section 13 similarly is designed to increase state revenue by authorizing a new type of wagering. Additionally, however, the legislation clearly is concerned with the impact of these additional race dates and this new form of wagering on existing licensees and permittees so far as it may impact state revenue or may impact this Department in performing its regulatory responsibilities. See 87-38, §(1) and §(2)(a)-(d), Laws of Florida. Given the fact that it is a new type of wagering and may reasonably be expected to impact revenue collected by other existing licensees as well as impacting this agency, it is reasonable to limit this new business to a single location. Furthermore, as demonstrated by the undisputed findings of fact of the trial court it is reasonable that this location be Marion County. Specifically, it was determined that Marion County has a nexus to the racing industry, has previously approved pari-mutuel wagering by referendum, and is a national and statewide center for thoroughbred racing. Given these characteristics, it is only reasonable to presume that a simulcast facility located in Marion County is likely to generate substantial interests and produce substantial state revenue. In initiating a new classification of racing in a single location, a location where this activity is likely to be favorably received, the

legislative classification is reasonably related to the subject of this legislation.

CONCLUSION

Based upon the foregoing arguments and citations of authority, Appellant, Department of Business Regulation, requests that this Court reverse the decision of the First District Court of Appeal rendered on September 1, 1988 (affirm the final judgment of hte trial court rendered on November 20, 1987) and hold Section 550.355, Florida Statutes (1987) to be a constitutionally sound general law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to Gary J. Anton, Esquire, Post Office Box 11059, Tallahassee, Florida 32302, and to Frederick P. Karl, Thomas J. Maida, and Michael G. Maida of Karl, McConnaughhay, Roland & Maida, P.A., 101 North Monroe Street, Monroe Park Tower, Suite 950, Tallahassee, Florida 32302, this 19th day of October, 1988.

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