

SUPREME COURT
STATE OF FLORIDA

STATE OF FLORIDA, DEPARTMENT
OF BUSINESS AND PROFESSIONAL
REGULATION, DIVISION OF PARI-
MUTUEL WAGERING,

CASE NOS.: SC05-2130
SC05-2131
L.T. Case Nos.: 1D04-3819
1D04-4094

Appellant,

v.

GULFSTREAM PARK RACING
ASSOCIATION, INC.,

Appellee.

APPELLANT'S SUPPLEMENTAL INITIAL BRIEF

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On October 16, 2006, this Court entered an Order directing the parties to serve supplemental briefs addressing the possible operation of the non-severability clause found in Section 550.71, Florida Statutes (1996), in the event the Court finds Section 550.615(6), Florida Statutes (1996), unconstitutional. This supplemental brief is in response to that Order.

STATEMENT OF THE FACTS

Chapter 550, Florida Statutes, is commonly referred to as the “Florida Pari-Mutuel Wagering Act.” Section 550.001, Florida Statutes. It contains Florida’s laws governing the regulation and taxation of pari-mutuel wagering activities in the state. Chapter 550 regulates numerous types of pari-mutuel activities including greyhound dog racing, thoroughbred horse racing, jai alai, simulcast wagering, and intertrack wagering. Sections 550.0251(12) and (13), Florida Statutes, authorize the Division to promulgate rules and impose discipline upon permitholders for violations of Section 849.086, Florida Statutes, which authorizes the play of poker in cardrooms at licensed pari-mutuel facilities. Compliance with Chapter 550 is also a mandatory condition to maintain a slot machine license pursuant to Section 551.104(4)(b), Florida Statutes.

The pari-mutuel industry is a highly regulated one, and the state has historically enforced a broad range of regulatory controls over the operations of permitholders.¹

¹ Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., 434 So. 2d 879, 882 (Fla. 1983) (“[T]he legislature has historically and traditionally enacted valid general laws which make numerous distinctions among the classifications of

In 1996, the Legislature substantially amended Chapter 550, Florida Statutes. See Chapter 96-364, Laws of Florida.² The changes included:

- Authorization for cardrooms at licensed pari-mutuel facilities, including a tax and licensing scheme and distribution of proceeds.
- Authorization for full-card simulcasting by thoroughbred and certain greyhound permitholders.
- Expanded authorization for intertrack wagering by certain permitholders.
- Tax relief for greyhound, jai-alai, and thoroughbred permitholders.
- Minimum and additional purse payments by greyhound permitholders.

Chapter 96-364 contained a non-severability clause. Specifically, Section 25 of Chapter 96-364 provided:

Section 25. If the provisions of any section of this act are held to be invalid or inoperative for any reason, the remaining provisions of this act shall be deemed to be void and of no effect, it being the legislative intent that this act as a whole would not have been adopted had any provision of the act not been included.

the various pari-mutuel permittees.”); Hialeah Race Course v. Gulfstream Park Racing Ass’n, 37 So. 2d 692, 694 (Fla. 1948) (“Authorized gambling is a matter over which the state may exercise greater control and exercise its police power in a more arbitrary manner...”).

² A copy of Chapter 96-364, Laws of Florida, is contained in the Appendix as Exhibit “A.”

Section 25 of Chapter 96-364 was codified as Section 550.71, Florida Statutes (1996). Significantly, Section 550.71 has been readopted by the Legislature six times,³ and is contained in the 2006 edition of the Florida Statutes.

Section 550.615(6), Florida Statutes, was created by Chapter 92-348, Laws of Florida. When first enacted in 1992, Section 550.615(6) provided:

(6) In any area of the state where there are three or more horserace permitholders within 25 miles of each other, no intertrack wager may be taken by any permitholder without the consent of all operating permitholders within 25 miles of each other. (Emphasis added.)

See Section 47 of Chapter 92-348, Laws of Florida.⁴ When Section 550.615(6), was first enacted, consent from all permitholders was required in order to conduct intertrack wagering in any area of the state where there are three or more horserace permitholders within 25 miles of each other. Evidence presented at trial showed that the requirement of obtaining consent from all operating permitholders within 25 miles of each other effectively precluded intertrack wagering in such areas. [Trans. 55, 109-110, 116]

In 1996, Section 550.615(6), Florida Statutes, was amended by Chapter 96-364, Laws of Florida. The statute, after the 1996 amendments, now provides:

³ See s.1, ch. 97-97; s.1, ch. 99-10; s.1, ch. 2003-25; s.1, ch. 2004-4; s.1, ch. 2005-1; s.1, ch. 2006-3.

⁴ A copy of Chapter 92-348, Laws of Florida, is contained in the Appendix as Exhibit “B.”

(6) In any area of the state where there are three or more horserace permitholders within 25 miles of each other, intertrack wagering between permitholders in said area of the state shall only be authorized under the following conditions: Any permitholder, other than a thoroughbred permitholder, may accept intertrack wagers on races or games conducted live by a permitholder of the same class or any harness permitholder located within such area and any harness permitholder may accept wagers on games conducted live by any jai alai permitholder located within its market area and from a jai alai permitholder located within the area specified in this subsection when no jai alai permitholder located within its market area is conducting live jai alai performances; any greyhound or jai alai permitholder may receive broadcasts of and accept wagers on any permitholder of the other class provided that a permitholder, other than the host track, of such other class is not operating a contemporaneous live performance within the market area. (Emphasis added.)

The 1996 amendments broadened the statute to allow for some intertrack wagering in any area of the state where there are three or more horserace permitholders within 25 miles of each other. Consent from all permitholders is no longer required.

In addition to being governed by Chapter 550, Florida Statutes, the pari-mutuel industry is also regulated by the administrative rules that are contained in Chapter 61D of the Florida Administrative Code. Following the enactment of Chapter 96-364, Laws of Florida, the Florida Department of Business and Professional Regulation made significant revisions to Chapter 61D, Florida Administrative Code, in order to ensure consistency of the administrative rules governing the pari-mutuel industry with the revised regulatory framework

contained in Chapter 96-364. Indeed, all of the rules that are now contained in Chapter 61D were promulgated after the enactment of Chapter 96-364.

SUMMARY OF THE ARGUMENT

While there are numerous Florida cases involving severability clauses, the Division is unaware of any Florida case involving a non-severability clause. Therefore, the issue raised by this Court's Order appears to be one of first impression in this state.

The Division does not concede any of its arguments that Section 550.615(6), Florida Statutes (1996), is a validly enacted general law. As set forth in its briefs and at oral argument, the Division asserts that the 25 mile limitation was enacted in 1992 by Chapter 92-348 and not by Chapter 96-364. Accordingly, it is the Division's position that the Appellate Court erred in ruling the 1996 act was unconstitutional.

If this Court finds that Section 550.615(6) is unconstitutional, the Court would have to give full effect to Section 550.71 and invalidate every statute that was enacted or amended by Chapter 96-364. The invalidation of Chapter 96-364 would resurrect those versions of the 1995 Florida Statutes that were amended or repealed by Chapter 96-364. The result would be extremely disruptive to the pari-mutuel industry because: (1) the authority for some pari-mutuel activities such as cardrooms and full card simulcast would be repealed, and permittees would no longer be allowed to conduct them; (2) substantial tax relief contained in Chapter

96-364 would be declared null and void, and taxes on permitholders would revert to the 1995 taxing scheme, which would represent a large tax increase to all pari-mutuel permitholders; (3) Chapter 550, Florida Statutes, would be comprised of a hodge podge of 1995 statutes and 2006 statutes, many of which may be inconsistent with one another; and (4) many of the Division's administrative rules may become invalid or inappropriate because they are based on the current statutory framework and not the statutory framework that existed in 1995.

ARGUMENT

I. This Court Should Not Reach the Question of Severability Because the Challenged Geographic Description Contained in Section 550.615(6) Originated in Chapter 92-348 and Not in Chapter 96-364.

This Court's Order regarding the possible operation of the non-severability clause calls into focus the fact that the Complaint challenged the wrong act. Instead of challenging Section 47 of Chapter 92-348, the Complaint challenged the constitutionality of Section 15 of Chapter 96-364. The Complaint alleges that this Section is a special law because "Section 550.615(6) is limited by its terms to a fixed geographical area defined as 'any area of the state where there are three or more horserace permitholders within 25 miles of each other'." Complaint ¶19. As noted in the Statement of the Facts, this statutory description was created by Chapter 92-348, and not Chapter 96-364. Consequently, Appellee's issue is really with Section 47 of Chapter 92-348, and not with Section 15 of Chapter 96-364.

There is no record before this Court regarding the state of the pari-mutuel industry or the legislative record upon which Chapter 92-348 was enacted. For

example, there is no evidence in the record as to what areas of the state met the geographic description contained in Section 47 of Chapter 92-348 when it was first enacted, or whether the classification contained in that Section was open or closed.

It is also important to recognize that Section 15 of Chapter 96-364 actually broadened Section 550.615(6) to allow for some intertrack wagering in any area of the state where there are three or more horserace permitholders within 25 miles of each other. In Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., 434 So. 2d 879 (Fla. 1983), this Court upheld another pari-mutuel statute that was challenged as a special law. In that case, this Court found it “significant to note that this statute amended an existing one and in fact made the class broader than it had been...” Id. at 882-83. Based on the fact that Section 15 of Chapter 96-364 actually broadened the ability to exchange intertrack signals in Section 550.615(6), it would be ironic if that legislative action were to lead this Court to invalidate all of Chapter 96-364.

Respectfully, the Court need not reach the question of severability in this case. In particular, this Court should rule that Appellee’s challenge fails because the geographic description contained in Section 550.615(6) originated in Chapter 92-348 and not in Chapter 96-364. For the reasons stated above, Appellee has not established that the challenged statute is an unconstitutionally enacted special law.

II. If This Court Finds Section 550.615(6), Florida Statutes (1996), Unconstitutional, It Must Invalidate All of Chapter 96-364.

A. In determining whether a statute is severable, legislative intent is paramount.

In Eslin v. Collins, 108 So. 2d 889, 892 (Fla. 1959) and State ex rel. Limpus v. Newell, 85 So. 2d 124, 128 (Fla. 1956), this Court stated the key factor in determining whether a statute is severable is “whether the court can say that the Legislature would not have enacted the law under scrutiny except for the provision which is herein held unconstitutional and invalid.” In making this determination, this Court has often applied the four-part test set forth in Cramp v. Board of Public Instruction of Orange County, 137 So. 2d 828, 830 (Fla. 1962):

When a part of a statute is declared unconstitutional the remainder of the act will be permitted to stand provided: (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other and, (4) an act complete in itself remains after the invalid provisions are stricken. (Emphasis added.)

See Richardson v. Richardson, 766 So. 2d 1036, 1041 (Fla. 2000); Waldrup v. Dugger, 562 So. 2d 687, 693 (Fla. 1990); Smith v. Department of Insurance, 507 So. 2d 1080, 1089 (Fla. 1987).

Even in cases where an act contains a severability clause, this Court has stated that in order for an invalid provision to be severable, the Court must be able to conclude that the Legislature would have enacted the remainder of the act

without the invalid provision. For example, in Barndollar v. Sunset Realty Corp., 379 So. 2d 1278 (Fla. 1979), this Court stated:

When...the valid and void parts of a statute are mutually connected with and dependent upon each other as conditions, considerations, or compensations for each other, then a severance of the good from the bad would effect a result not contemplated by the legislature; and in this situation a severability clause is not compatible with the legislative intent and cannot be applied to save the valid parts of the statute.

Id. at 1281, quoting Small v. Sun Oil Co., 222 So. 2d 196, 199-200 (Fla. 1969).

In all of the above cases, the key factor considered by this Court in determining whether an act is severable is whether the Legislature would have passed the remainder of the act without the invalid provision.

B. The Legislative intent of Section 550.71 is clear and unambiguous and must be followed.

Courts are “without power to construe an unambiguous statute in a way that would extend, modify or limit its express terms or its reasonable and obvious implications.” American Bankers Life Assurance Co. v. Williams, 212 So. 2d 777, 778 (Fla. 1st DCA 1968). When the legislative intent is clear from the plain wording of a statute, it is a court’s duty to give effect to that intent. Knowles v. Beverly Enterprises-Florida, Inc., 898 So. 2d 1 (Fla. 2005).

In the instant case, there is no reason for the Court to analyze whether the Legislature would have likely enacted the remainder of Chapter 96-364 if Section

15 of that Chapter is found invalid. The Legislature unequivocally stated in Section 550.71 that it would not have. Section 550.71 provides:

If the provisions of any section of this act are held to be invalid or inoperative for any reason, the remaining provisions of this act shall be deemed to be void and of no effect, it being the legislative intent that this act as a whole would not have been adopted had any provision of the act not been included. (Emphasis added.)

Indeed, Gulfstream's witness Mr. Donn indicated that Chapter 96-364 was a collaborative effort in his testimony at the trial. When asked if the bill was a negotiated bill within the pari-mutuel industry, he replied:

"Well, the bill -- most pari-mutuel legislation -- negotiating is probably a kind word. It's a process where various factions and parties try to include different pieces that are favorable to them.

So, from that standpoint, you know, it's a collaborative process. Sometimes you are in the loop and sometimes you're not, but I was involved in that, yes."
[Trans. Page 70, Lines 18-24]

Based on this statement, it was the agreement of the industry that the non-severability language should be included in the act and, thus, its inclusion is a clear statement of legislative intent that if any section failed, the whole would fail. Should this Court find that Section 550.615(6), Florida Statutes, unconstitutional, it must invalidate all of Chapter 96-364.

While there are no Florida cases involving a non-severability clause, the majority of federal and out-of-state courts that have reviewed such clauses have enforced them. See e.g. Alaska Airlines, Inc. v. City of Long Beach, 951 F. 2d 977, 981 (9th Cir. 1991) (discussing non-severability clause without questioning its

validity); Wisconsin Realtors Ass'n v. Ponto, 233 F. Supp. 2d 1078, 1093 (W.D. Wis. 2002) (“By virtue of the conclusion that [the] section ... of the Act is unconstitutional, the non-severability clause voids all of the Act’s other campaign finance provisions.”); Pueblo of Sandia v. Babbitt, 47 F. Supp. 2d 49, 51 (D.D.C. 1999) (“HB399 includes a non-severability clause ensuring that the compacts could not go into effect without the questionable provisions”); Scinto v. Kollman, 667 F. Supp. 1106, 1109 (D. Md. 1987) (discussing applicability of non-severability clause without questioning its validity). The majority of courts enforce non-severability clauses because they contain a clear statement of the legislature’s intent. For example, in State ex rel. Broughton v. Zimmerman, 52 N.W. 2d 903, 909 (Wis. 1952), overruled in part on other grounds, State ex rel. Reynolds v. Zimmerman, 126 N.W. 2d 551 (Wis. 1964), the Supreme Court of Wisconsin enforced a non-severability clause stating:

In the instant case there is no necessity for this court to grope in darkness in an effort to spell out the legislative intent. The legislature had made it crystal clear by its language in sec. 4 of ch. 728 that it ‘does not intend that any part of this act shall be the law if any other part is held unconstitutional.’ In the absence of sec. 4, if we were to find sec. 3 invalid, we would be faced with the issue of whether secs. 1 and 2 should be upheld as valid in spite of such invalidity of sec. 3, and the determining factor would be the legislative intent. All that sec. 4 does is state such legislative intent, and we can perceive no valid reason why the legislature does not have the right to definitely state its intent as to severability.

* * *

We therefore conclude that, inasmuch as the legislature made it clear that it did not intend to enact ch. 728, Laws of 1951, except as a whole, and, if any part is found invalid then the remainder shall not constitute law, if we find any part of sec. 3 invalid we must declare the entire reapportionment act void, and have no alternative which would permit us to find part of the act valid and part invalid. (Emphasis added.)

In Zobel v. Williams, 457 U.S. 55 (1982), the United State Supreme Court discussed in dicta a non-severability clause contained in an Alaskan state statute.

In addressing the clause, Chief Justice Burger stated:

Invalidation of a portion of a statute does not necessarily render the whole invalid unless it is evident that the legislature would have enacted the legislation without the invalid portion (citations omitted). Here, we need not speculate as to the intent of the Alaska Legislature; the legislation expressly provides that invalidation of any portion of the statute renders the whole invalid.

457 U.S. at 65. However, in Zobel, the Supreme Court decided to remand the case to the Alaskan state courts to rule on the non-severability clause. Id.

The Legislature's intent that the non-severability clause contained in Chapter 92-348 be strictly enforced is demonstrated by the Legislature's decision to: (1) codify that provision in Section 550.71 as a official part of the Florida Statutes; and (2) re-adopt Section 550.71 six separate times when the Legislature has adopted earlier versions of the Florida Statutes as the official statute laws of the state. See Section 11.2421, Florida Statutes.

Based on the above authorities, and the clear statement of legislative intent contained in Section 550.71, should this Court find Section 550.615(6) unconstitutional, it must invalidate all of Chapter 96-364.

C. Invalidating all of Chapter 96-364 would have a tremendous impact on the pari-mutuel industry.

If this Court were to declare all of Chapter 96-364 void and of no effect, there would be drastic consequences throughout the pari-mutuel industry. These consequences would include, but not be limited to, the following:

1. Cardroom License Holders

Section 849.086, Florida Statutes, was created, in its entirety, by Section 20 of Chapter 96-364, Laws of Florida. A ruling that Section 550.615(6), Florida Statutes, is unconstitutional would render the cardroom authorization in Section 849.086, Florida Statutes, null and void.

If the permitholders who currently hold licenses issued pursuant to Section 849.086 were to continue poker operations in the cardrooms, such continued activity would violate the gambling house provisions of Section 849.01, Florida Statutes, and gambling on poker at such cardrooms would be illegal under Section 849.08, Florida Statutes. A conviction related to gambling would subject the permitholder's pari-mutuel permit and, where applicable, slot machine license to revocation pursuant to Sections 550.1815 and 551.104. Further, without clear direction from this Court as to the effect of Section 550.71, law enforcement officials and courts will lack guidance, which might lead to inconsistent

enforcement of gaming laws across the 13 counties with pari-mutuel facilities that currently hold cardroom licenses.

2. Pari-Mutuel Wagering Taxes

Chapter 96-364, Laws of Florida, made significant changes to the pari-mutuel tax structure by reducing tax rates and providing credits and exemptions for each class of permit holder. If Chapter 96-364 is declared null and void, the pari-mutuel wagering tax system for the State of Florida would largely revert to the 1995 tax system,⁵ which would represent a significant tax increase to all pari-mutuel permit holders.

Section 550.0951(1) was amended to provide every greyhound permit holder with a tax credit equal to the number of live races conducted in the previous fiscal year multiplied by the daily license. Section 550.0951(4) was also amended to delete the requirement that greyhound permit holders pay a tax equal to the breaks.⁶ Section 550.0951(3)(c)2, Florida Statutes, was amended for the first time to create reduced taxes on intertrack wagers for tracks and frontons in the areas referenced in Sections 550.615(6) or (8). The invalidation of Chapter 96-364 would cause the

⁵ If this Court were to invalidate Chapter 96-364 in its entirety, then the 1995 version of those statutes that were amended by Chapter 96-364 would be revived. See State ex rel. Boyd v. Green, 355 So. 2d 789, 795 (Fla. 1978) (“Where a repealing act is adjudged unconstitutional, the statute...it attempts to repeal remains in force.”); In re Advisory Opinion to Governor, 63 So. 2d 321, 327 (Fla. 1953) (“Since we hold Chapter 26945, Laws of Florida 1951, unconstitutional, the effect of such holding is to re-instate Chapter 509, F.S.A., which it attempted to repeal.”).

⁶ The term “breaks” is defined in Section 550.002(1), Florida Statutes.

tax on handle for intertrack wagering for greyhound permitholders in such areas to increase from the current rate of 3.9 percent to the basic tax on handle of 7.6 percent.

Section 550.09511, Florida Statutes, was amended in 1996 to reduce the tax on handle for live jai alai performances to 4.25 percent from the previous rate of 5.0 percent. Other amendments to Section 550.09511, Florida Statutes, also provided for a reduction in the rate for live and intertrack tax on handle for permitholders whose total taxes exceeded certain base years. The invalidation of Chapter 96-364 would cause the basic tax on handle rate for jai alai to increase from the current 2.0 percent to 7.1 percent.⁷ Taxes on intertrack handle for jai alai were also reduced in areas referenced in Sections 550.615(6) or (8) by amendments to Section 550.0951(3)(c)2., Florida Statutes. Consequently, the intertrack tax rate would increase from the lowest statutory rate of 2.3 percent to the previous rate of 7.1 percent.

Section 550.0951(3)(c)1., Florida Statutes, was amended to provide a specific tax rate for the tax handle for intertrack wagering on rebroadcasts of simulcast horseraces for the first time. A specific tax on handle of such races was first established at 2.4 percent by Chapter 96-364, Laws of Florida. The tax rate has been subsequently reduced to .5 percent. However, the establishment of a specific rate for rebroadcast of simulcast horse signals was itself created by Chapter 96-364. Thus, the tax rate for intertrack wagering on rebroadcasts of

⁷ See, Section 550.0951(3)(b), Florida Statutes (1995).

simulcast horseraces would increase from .5 percent to 3.3 percent, which was the basic tax rate for intertrack wagering on horse races prior to the 1996 amendments.⁸

Section 550.09514, Florida Statutes, was created by Chapter 96-364 to establish a tax exemption for all greyhound permitholders from tax on handle on the first \$100,000 per performance until such time as the tax savings provided by the exemption reaches \$360,000. This section also established a mandatory purse structure for greyhound racing. The invalidation of Chapter 96-364 would eliminate the mandatory purse structure for greyhound racing.

3. Full Card Simulcast

Prior to the adoption of Chapter 96-364, Laws of Florida, receipt of simulcast signals was restricted. Simulcast races could not exceed 20 percent of the total races offered for wagering by a permitholder. Prior to the passage of Chapter 96-364, the opening sentence of Section 550.3551(6), Florida Statutes (1995), read: "In no event may more than 20 percent of the races or games on which wagers are taken during any race meet be broadcast from locations outside this state except when otherwise authorized by the division." Section 12 of Chapter 96-364, Laws of Florida, amended Section 550.3551(6), Florida Statutes (1995), to remove this restriction from horse racing and jai alai permitholders, as well as greyhound permitholders located in any area described by Section 550.615(6), Florida Statutes. Thus, full card simulcast would no longer be

⁸ See, Section 550.0951(3)(c)1., Florida Statutes (1995).

authorized and all permitholders would once again be restricted to offering simulcast wagering for no more than 20 percent of the races or games upon which wagers are taken.

4. Owners, Breeders and Trainers Associations

In conjunction with the authorization to conduct full card simulcast, Chapter 96-364, Laws of Florida, addressed the percentages of the wagering which permitholders are required to retain and pay as purses and owner's awards. See Sections 550.2625(2)(e), 550.2625(3), 550.3551(6)(a), and 550.3551(6)(b). Also, for the first time, a mandatory purse structure was created by the Legislature for greyhound racing in Section 550.09514. The mandatory purse requirement would be eliminated if Chapter 96-364 is declared invalid.

5. Section 550.2415, Florida Statutes – Animal Cruelty and Post Race Testing

Chapter 96-364, Laws of Florida, amended Section 550.2415(6), Florida Statutes (1995), to add subsection (d), which makes cruelty to animals involving a racing animal a violation of the chapter. Inclusion of this provision within Section 550.2415, Florida Statutes, authorizes the Division to impose a greater monetary penalty under the provisions of Section 550.2415(3)(a), Florida Statutes.

Chapter 96-364, Laws of Florida, also created Section 550.2415(16), Florida Statutes, which requires the Division to adopt rules regulating medication levels that would have no impact on the outcome of a race. This is significant because, without such a rule, the detection of any drug is a violation of Section 550.2415(1), Florida Statutes, regardless of the level of the medication. Medication levels have

been established pursuant to these statutes in Rules 61D-6.007(2) and 61D-6.008(6), Florida Administrative Code, for sulfa drugs, which are used to combat infectious illnesses, and in Rules 61D-6.007(3) and 61D-6.008(5), Florida Administrative Code, for caffeine and its metabolites. Therefore, the authority for these rules would have to be carefully reviewed for statutory authority if Chapter 96-364 is invalidated.

6. Other Statutes Affected

As previously discussed, Chapter 96-364 created Sections 550.09514 and 849.086 for the first time. That act also created or substantially amended other sections of Chapter 550. A number of the amendments to certain sections were so significant as to have in essence created new statutes. Section 550.26352, which provides specific authorization for a license to conduct the Breeders' Cub Meet, is an example of such a section.

Further, the following sections were also substantially revised by Chapter 96-364, and have not been amended since 1996: Section 550.6335, (was materially revised to create the current detailed section addressing retention of a surcharge on intertrack wagers); Section 550.70, (was amended to create subsection (5) providing that wagering on jai alai game can continue until the start of the serving motion).

Chapter 96-364 also amended several sections of Chapter 550 by inserting a direct reference to the geographic description contained in Section 550.615(6). The following sections were created or amended by Chapter 96-364 to include a direct citation to Section 550.615(6): Section 550.0951(3)(c)2, (establishing

specific tax rates for greyhound and jai alai permitholders in any such area); Section 550.09514(2)(b), (allowing two greyhound permitholders an a county in such an area to share responsibility for purse payments by making those permitholders jointly and severably liable for the payment of purses); Section 550.3551(6)(a), (which caps the number of simulcast races that can be received by a greyhound permitholder not located in such an area); Section 550.3551(6)(b), (which requires a harness track to pay guest tracks located in any such area fifty percent of the net proceeds from the rebroadcast of simulcast harness races); Section 550.6305(9)(g)2, (which requires a thoroughbred permitholder to make simulcast signals received after 6:00 p.m. available to any permitholder who is eligible to conduct intertrack wagering and is located in any such area). If Section 550.615(6), Florida Statutes, were declared unconstitutional, the references to that section that were created in Chapter 96-364, and which remain in other sections of Chapter 550, would likely be invalid as well.

7. Overall Regulatory Impact

While many sections of Chapter 550, Florida Statutes, were amended by Chapter 96-364, other significant sections were not. If Chapter 96-364 were invalidated, Chapter 550, Florida Statutes, would become a mixture of 1995 statutes and 2006 statutes, many of which may be inconsistent with one another, or at least not part of a coherent, unified regulatory scheme.

Further, all of the Division's administrative rules have been promulgated and/or amended since 1995. The existing rules are based on the existing statutory framework, and not the statutory framework that existed in 1995. Thus, the

existing rules regulating the pari-mutuel industry would not be consistent with the 1995 statutes.

For all of the above reasons, invalidating Chapter 96-364 in its entirety would have a major impact on the pari-mutuel industry.

D. Summary

The legislative directive contained in Section 550.71 is clear. While there have been subsequent legislative changes to many of the statutes that were created or amended by Chapter 96-364, Laws of Florida, the overall regulatory structure for the pari-mutuel industry is still based on the 1996 enactment. Moreover, while the non-severability clause was initially adopted in 1996, the Legislature, through Section 11.2421, has readopted Section 550.71 six separate times since its original enactment. Thus, neither the passage of time nor subsequent legislative amendments to Chapter 550 give this Court the discretion to ignore the Legislature's intent that all of Chapter 96-364 be declared invalid if any of its provisions be declared inoperative for any reason. Consequently, if this Court were to find Section 550.615(6), Florida Statutes (1996), unconstitutional, it would have to invalidate all of Chapter 96-364.

CONCLUSION

Appellant respectfully requests that this Court reverse the decision of the district court and affirm the constitutionality of Chapter 96-364.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy has been furnished by hand delivery and express mail to the following this _____ day of November, 2006:

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