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The _____ MICHIGAN GAMING _____ Newsletter



MICHIGAN CONSTITUTIONAL PROVISION REQUIRING STATEWIDE VOTE FOR EXPANDED GAMING UPHELD

On Monday, the United States Sixth Circuit Court of Appeals affirmed the dismissal of a lawsuit brought against the state of Michigan by the horse racing industry (*Northville Downs v. Granholm*). The lawsuit had challenged the voter initiative Proposal 1 of 2004, which amended the Michigan Constitution to require both statewide and local voter approval of any form of gambling authorized by law after January 1, 2004, as well as any new state lottery games utilizing table games or player-operated mechanical devices or electronic devices.

The plaintiffs in the case, who were constituents of the horse racing industry, alleged that Proposal 1 violated their federal constitutional rights and sought a federal court injunction against its enforcement and a declaration that it was invalid. Both the U.S. District Court for the Eastern District of Michigan, and the Sixth Circuit Court of Appeals rejected the arguments.

The plaintiffs in the case argued that Proposal 1:

1. violates Equal Protection because it is discriminatory on its face, treating two classes of similarly situated individuals in a different manner;
2. violates Equal Protection by restructuring the political system to the detriment of the horse racing industry; and
3. violates the Dormant Commerce Clause by burdening interstate simulcast wagering in favor of in-state casino wagering.

The Court rejected these arguments, applying a standard that provides for giving states a "wide latitude" under Equal Protection when state economic

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interests are at issue. The court also found no violation of the Commerce Clause:

“Proposal 1 does not regulate horse racing or betting on horse racing. In effect it merely prevents the horse racing tracks from installing slot machines, running off track racing theaters, and operating account wagering without voter approval while not banning such activities at entirely different casino facilities in Detroit. Plaintiffs have not shown that, in effect, Michigan has protected the in-state simulcast wagering market against out-of-state simulcast wagering. ... The effect of Proposal 1 is to allow one set of in-state firms, namely three Detroit area casinos, to offer slot machines and other forms of gambling that other in-state firms, namely the plaintiff race tracks, may not without voter approval. Thus, whatever burden Proposition 1 places on the racetracks, it is not a burden on interstate commerce for Dormant Commerce Clause purposes.”

In his concurrence with the majority opinion, Senior Circuit Judge Gilbert Merritt made the following interesting observation with regard to the significance that the case involves gambling, rather than some other form of economic activity:

“If the economic activity were different so that the monopoly consisted of three TV stations or three barge companies and the aggrieved party was a newspaper or a manufacturer of tow boats, we would most likely say that we have a law discriminatory on its face and that the monopoly burdens interstate and intrastate commerce. In such an obvious case of economic protectionism, our analysis and weighing process would be entirely different. These hypothetical cases prove to me that the outcome is driven by the fact that the activity is gambling. If it were milk, news or shipping, our attitude and the result would change...”

ODAWA CASINO RESORT: TRIBE CONSIDERING REDUCING GAMBLING AGE

According to a report by the *Petoskey News*, on September 12, 2010, the Little Traverse Bay

Band of Odawa Indians Tribal Council (“Tribe”) posted The Waganakising Odawak Gaming Regulatory Statute for comment. Included in the statute is a provision that seeks to reduce the gambling age from 21 to nineteen at the Tribe’s Odawa Casino Resort. If approved, the statute will replace the Waganakising Odawak Gaming Regulatory Act of 2005.

Tribal council member Gerald Chingwa told the *Petoskey News* that “from a marketing point of view, we have to ask, ‘are we leaving out a viable part of that market? It was also thought, by some, that we send our young men off to battle at 18, and then we make rules that they can’t be adults in other parts of their life.”

In addition, the statute includes a provision allowing the use of ‘complimentary items’ for Tribal officials. Specifically, it states: “Employee, Primary Management Official, Tribal Council member, Tribal Chairperson, Vice-Chairperson, member of the Tribal Judiciary, member of the Gaming Board of Directors or the Commission, shall be authorized to receive complimentary items from the Tribe’s gaming enterprise if it is received by the general public or as a Citizens of the Tribe other than items associated with promotions, incentives and awards relating to gaming activity.

According to the report, Tribal Chairman Ken Harrington stated that the draft statute is required to be posted on the calendar for consideration for a minimum of 25 days. If passed by the tribal council, Mr. Harrington will be given a 30-day grace period to decide whether to sign it into law.

MGCB NOTICE OF RACE DATE PUBLIC MEETING

On Wednesday, September 29, 2010, the Michigan Gaming Control Board (“MGCB”) released a Notice of Public Meeting for Thursday, October 14, 2010. The stated purpose of the public meeting is to give the Michigan horse racing industry and 2011 Race Meet License Applicants or other interested persons an opportunity to provide information to Executive Director Richard Kalm regarding the pending

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2011 Race Meet License applications and the eligibility and fitness of the respective applicants for licensure.

The meeting is open to the public and questions, comments and suggestions from the public are welcome during the public comment portion of the meeting.

The MGCB meeting will take place at the Detroit Office Hearing Room, located at Cadillac Place, 3062 W. Grand Blvd., Suite L-700, Detroit, Michigan at 1:30 p.m.

G2E EARLY BIRD DISCOUNTS EXPIRE OCTOBER 28

Early Bird Discounts for the 2010 Global Gaming Expo (G2E), to be held at the Las Vegas Convention Center in Las Vegas, Nevada, from November 15 through 18, expire on October 28.

Early Bird Discounts include group discounts, Native American Casino Registration packages and special hotel and travel deals which registrants may take advantage of at the G2E website.

Patrons will have the opportunity to apply for Express Badges for G2E 2010. Expo organizers say the new badges will expedite registration and check-in time, thus creating more ease and convenience.

Over 30,000 gaming professionals from around the world are scheduled to attend this year's G2E from all gaming industry trades and sectors.

To register, or if you have any questions about G2E, please visit www.globalgamingexpo.com.

DAILY AGA SMARTBRIEFS

The American Gaming Association (AGA), which produces the Global Gaming Expo, has recently introduced *AGA SmartBriefs*, a free daily e-newsletter which keeps the gaming industry up to date on the latest gaming news.

Sign up and stay ahead of the curve with updates on products, technologies, amenities, industry happenings and more. You can register to receive the free *AGA SmartBriefs* by visiting www.smartbrief.com/aga/.