

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

NORTHVILLE DOWNS, a Michigan co-partnership,  
OIL CAPITAL RACE VENTURE, INC.  
d/b/a MT. PLEASANT MEADOWS, and GREAT LAKES  
QUARTERHORSE ASSOCIATION, a Michigan non-profit  
corporation.

Plaintiffs,

-vs-

THE HONORABLE JENNIFER GRANHOLM, the  
Governor of the State of Michigan, and MICHAEL  
COX, ESQ., Michigan State Attorney General,

Defendants.

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PHILLIP B. MAXWELL (P-24872)  
PHILLIP B. MAXWELL & ASSOCIATES, PLLC  
Co-counsel for Plaintiffs  
20 Hudson Street  
Oxford, MI 48371  
(248) 969-1490

EDWARD DRAUGELIS (P-12947)  
DRAUGELIS & ASHTON LLP  
Co-counsel for Plaintiffs  
380 N. Main, Clawson, MI 48017  
(248) 588-7704

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COMPLAINT

NOW COME Plaintiffs, by and through their counsel, PHILLIP B. MAXWELL &  
ASSOCIATES, PLLC and DRAUGELIS & ASHTON, LLP, and for their complaint against  
defendants, state as follows:

**PRELIMINARY STATEMENT**

1. Plaintiffs seek to have declared invalid and enjoin the enforcement of Section 41, Article IV of the Michigan Constitution because it violates the following provisions of the Constitution of the United States: the Due Process Clause of the Fifth and Fourteenth Amendments, the Equal Protection Clause of the Fourteenth Amendment, the Commerce Clause and Right to Petition contained in the First Amendment.

**JURISDICTION**

2. Jurisdiction is conferred upon the Court as follows:
  - (a) 28 U.S.C. Section 1331, in that the matter arises under the United States Constitution.
  - (b) 28 U.S.C. Section 1343(a)(3) and (a)(4) as Plaintiffs seek relief under 42 U.S. Section 1983 alleging deprivations under color of state law of rights, privileges or immunities secured by the Constitution of the United States.
  - (c) Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. Sections 2201 and 2202 and by Rule 57 of the Federal Rules of Civil Procedure, and by 42 U.S.C. Section 1983.

PARTIES

3. Plaintiff, NORTHVILLE DOWNS, is a Michigan Co-Partnership which operates a state-licensed harness horse meet in the City of Northville, Wayne County, Michigan.
4. Plaintiff, OIL CAPITAL RACE VENTURE, INC. d/b/a MT. PLEASANT MEADOWS is a Michigan corporation which operates a mixed quarter horse and thoroughbred meet in Mt. Pleasant, Michigan.
5. Plaintiff, GREAT LAKES QUARTER HORSE ASSOCIATION, is a Michigan non-profit corporation certified, by the Michigan State Racing Commission, pursuant to MCL 431.313, to contract with quarter horse race meeting licensees on behalf of its membership of quarter horse horsemen with regard to purses and other matters affecting racing at Mt. Pleasant Meadows.
6. The Honorable Jennifer Granholm is the duly elected Governor of the State of Michigan and, as such, its Chief Executive Officer.
7. Michael Cox is the duly elected Attorney General of the State of Michigan, and as such, the chief law enforcement officer of the state.
8. Venue is proper in that a substantial part of the events or omissions giving rise to the claim occurred in the Eastern District of Michigan, Southern Division, and a substantial part of the property that is the subject of the action is situated in that district, per 28 U.S.C. Section 1391(b)(2).

GENERAL AVERMENTS

9. Competition for the wagering dollar, caused by the advent of the State Lottery and Indian tribal gaming, caused total pari-mutuel wagering (i.e. “handle”) at Michigan horse racing tracks to fall from a 1989 high of \$443,113,234.00 to \$310,522,445.00 in 1995. The passage of the Horse Racing Law of 1995, MCL 431.301 *et seq.*, which permitted “simulcast” wagering, resulted in increased handle of \$467,785,576.00 in 1996 and \$474,608,578.00 in 1997, partially because race tracks which had previously been open for only a portion of the year during their live race meets, were now open for simulcast wagering seven days a week, 365 days a year. The remedy to the health of the horse racing industry provided by simulcast, however, was short-lived.
10. In late 1996, voters passed a statewide referendum, Proposal E, which permitted casino gaming in Detroit. Proposal E was adopted by the Michigan Legislature as the Michigan Gaming Control and Revenue Act, MCL 432.201 *et seq.* Three casino licenses were subsequently awarded in Detroit.
11. Under the impact of Detroit casino gaming, which commenced in 1999 and reached a billion dollars in gross annual wagering by the end of 2001, gross wagering at Michigan’s horse racing tracks plummeted from the 1997 high of \$474,608,578.00 to \$260,963,080.00 in 2007, a 45% decline.
12. In 2003, as in 1995, the horse racing industry sought a legislative remedy to stem its decline. Bills were passed in 2004 in the State Senate and House (HB-4609-4611) which would have permitted account wagering, off-track racing theatres, and video lottery terminals (VLTs) at the state’s race tracks.

13. The casino interests, however, responded, by sponsoring a statewide ballot proposal in the 2004 general election, Proposal 04-1, which erected a barrier to legislative relief, the requirement of state-wide and local *referenda*, for the state's gaming licensees. Specifically excluded from this referendum requirement were the three Detroit casinos and Indian tribal gaming.
14. Portrayed as a "broad-based coalition" in its press releases, "Let Voters Decide Yes on 1," the political action committee formed to finance to Proposal 04-1, was in fact financed 98% by the Detroit-based and tribal casinos. Of the \$19.45 million in direct contributions raised to promote the proposal, \$19.141 million came from casino interests; and the remainder from contractors, public relations firms and lobbyists working with the casinos on the campaign. In fact, \$17.45 million, or 90% of the total raised, came from just two casino entities, MGM Grand Detroit, LLC and the Saginaw Chippewa Tribe which operates the Soaring Eagle Casino in Mt. Pleasant, Michigan. Horse racing interests fighting the proposal were out-spent five-to-one and, as a result, Proposal 04-1 passed and was enacted as Section 41, Art. IV of the Michigan Constitution. It reads as follows:

The legislature may authorize lotteries and permit the sale of lottery tickets in the manner provided by law. No law enacted after January 1, 2004, that authorizes any form of gambling shall be effective, nor after January 1, 2004, shall any new state lottery games utilizing table games or player operated mechanical or electronic devices be established, without the approval of a majority of electors voting in a statewide general election and a majority of electors voting in the township or city where the gambling will take place. This section shall not apply to gaming in up to three casinos in the City of Detroit or to Indian Tribal Gaming.

15. In October 2005 Saginaw Valley Trotting Association, Inc., a Michigan harness track in Saginaw, Michigan, no longer able to sustain its mounting financial losses, suspended operations.
16. In 2007 Magna Entertainment Corporation, citing continuous operating losses, closed down the sole remaining thoroughbred race track in the state, Great Lakes Downs in Fruitport, Michigan, and, further, abandoned its license to construct a metro-area thoroughbred track in Romulus, Michigan.

#### COUNT I—CONSTITUTIONAL ISSUES

17. Plaintiffs repeat and re-allege paragraphs 1-16 hereof, as if stated herein *verbatim*.
18. The licensed horse racing meets in Michigan are heavily reliant on interstate commerce. The vast bulk of their pari-mutuel handle comes from wagering on simulcast signals originating out-of-state, along with the attendant interstate electronic transmission of funds.
19. Section 41, Art. IV of the Michigan Constitution treats similarly situated entities, i.e. gaming licensees, differently in that it erects a barrier to legislative access, i.e. the requirement of local and state-wide *referenda*, which applies to one group, the state's horse racing tracks, and not to other gaming licensees, i.e. the Detroit casinos and Indian tribal gaming.
20. The afore-mentioned barrier to legislative access established by Section 41, Art. IV violates the First Amendment's right to petition the government for redress of grievances, U.S. Const., Amend. I.

21. Section 41, Art. IV further violates the Commerce Clause of the U.S. Constitution, Article I, Section 8, Clause 3, because the disparate treatment of the racetrack interests effected by Section 41, Art. IV protects the interests of a discrete group, i.e. the casino interests, from economic competition, by making it easier for those interests to facilitate changes in the laws that govern their operations.
22. Section 41, Art. IV further violates the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution, in that similarly situated interests have been treated differently, without justification. Section 41, Art. IV requires statewide and local *referenda* before any new form of gambling can be authorized, then excepts the casino interests from that requirement. The only remaining gaming licensees in the state are the horse racing tracks and the obvious rationale behind the ballot proposal, financed wholly by the casino interests and their contractors, was to protect the casino interests from the economic competition that would ensue if other gambling forms were legislated at the racetracks.
23. Section 41, Art. IV further violates the Due Process clause of the Fifth and Fourteenth Amendment because Proposal 04-1 did not effect an across-the-board requirement of state-wide and local *referenda*, i.e. applicable to all gaming licensees but instead targeted particular licensees, the race tracks.

**COUNT II-42 U.S.C. Section 1983**

24. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1-23 as if stated herein *verbatim*.

25. The actions of defendants in enforcing Section 41, Art. IV are done under color of state law.
26. The enforcement of Section 41, Art. IV by defendants violates rights secured by the U.S. Constitution, as detailed in Count I, and consequently violates of 42 U.S.C. Section 1983.
27. Plaintiffs' continued business viability is threatened by their inability to seek legislative remedies for their declining revenue. Numerous other states have successfully addressed the problems of a declining horse racing industry with legislative remedies which added new gambling forms, including but not limited to Pennsylvania, West Virginia, Delaware, Iowa, Louisiana, New Mexico, Rhode Island, Florida and New York.
28. Plaintiffs have no adequate or effective remedy other than the relief sought herein.

**WHEREFORE**, Plaintiffs pray as follows:

1. For judgment declaring Section 41, Art. IV of the Michigan Constitution to be invalid and unconstitutional as violative of the First Amendment's Right to Petition for Redress of Grievances, the Equal Protection Clause of the Fourteenth Amendment, the Due Process Clause of the Fifth and Fourteenth Amendment and the Commerce Clause.
2. For judgment permanently enjoining Defendants and their agents, employees and representatives, from enforcing, seeking to enforce, or in anyway relying upon Section 41, Art. IV of the Michigan Constitution or any rules, regulations, interpretations or directives promulgated there under: and

3. For judgment granting such other relief, including costs and attorneys fees so wrongfully incurred, and further relief as may be deemed just and proper by the Court.

**PHILLIP B. MAXWELL & ASSOC., PLLC**  
Co-counsel for Plaintiffs

/s/ Phillip B. Maxwell  
Phillip B. Maxwell  
20 Hudson Street  
Oxford, MI 48371  
Phone: 248-969-1490  
E-Mail: [Phillip@pbmaxwell.com](mailto:Phillip@pbmaxwell.com)  
P24872

**DRAUGELIS & ASHTON, LLP**  
Co-counsel for Plaintiffs

/s/ Edward W. Drugalis  
380 N. Main St.,  
Clawson, MI 48017  
Phone: 248-588-7704  
E-Mail: [dashdb@ameritech.net](mailto:dashdb@ameritech.net)  
P12947

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