

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**CHURCHILL DOWNS INCORPORATED;
CHURCHILL DOWNS TECHNOLOGY
INITIATIVES COMPANY, doing business
as TWINSPIRES.COM,**

Plaintiffs,

v.

CHUCK TROUT, in his official capacity as Executive Director of the Texas Racing Commission; GARY P. ABER, SUSAN COMBS, RONALD F. EDERER, GLORIA HICKS, MICHAEL F. MARTIN, ALLAN POLUNSKY, ROBERT SCHMIDT, JOHN T. STEEN III, VICKI SMITH WEINBERG, in their official capacity as members of the Texas Racing Commission,

Defendants.

Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. For years, relations between the racing industry and the Texas Racing Commission have been governed by an unspoken but implicit understanding: Under the U.S. Constitution, states may ban all wagering on horse races altogether—but they may not authorize wagering on terms that effectively favor in-state over out-of-state tracks. Indeed, it is only because the Commission has dutifully declined to enforce unconstitutionally discriminatory laws—quarter-century-old state laws that would otherwise require persons wishing to bet on a horse race to do so *in person*, to the obvious detriment of out-of-state tracks and their in-state customers—that Texans have been able to wager on out-of-state races by telephone or on the Internet since the 1990s.

2. A state cannot impose an “in person” transaction requirement on the purchase of shoes or books, for no reason than to favor local businesses at the expense of out-of-state entities like Zappos.com or Amazon.com. Such a law would surely violate the dormant Commerce Clause. *See, e.g., Granholm v. Heald*, 544 U.S. 460, 472 (2005) (“The mere fact of nonresidence should not foreclose a producer in one State from access to markets in other States.”); *id.* at 475 (“in-state presence requirement runs contrary to our admonition that States cannot require an out-of-state firm to become a resident in order to compete on equal terms”) (quotations omitted).

3. The same principle applies here. Indeed, this case is even more extreme. The Texas in-person requirement imposes a heavy tax on out-of-state tracks, by forcing them to endure one of three burdens in order to accept Texas wagers: The track must either (1) funnel the wagers through one of its Texas competitors (assuming the competitor is even willing to do so); (2) establish its own Texas track (assuming the Commission is even willing to grant the license); or (3) force customers to travel across state lines to place the wager (assuming a willing and able customer).

4. So, put simply, Texas law would deprive the vast majority of Texans of any meaningful opportunity to wager on the Kentucky Derby or any other out-of-state horse race, *unless the out-of-state track secures the consent of one of its in-state competitors*. This is tantamount to forcing Pepsi to sell its soda only through Coke vending machines, only if Coke consents, and only if Pepsi agrees to endure whatever marketing conditions Coke might demand and pay whatever fee Coke might impose. The resulting competitive disadvantage to Pepsi is obvious. And Texas law is no different.

5. This is a straightforward violation of the dormant Commerce Clause. After all, Texas law plainly raises costs on out-of-state tracks, and thereby tilts the playing field—and

market share—toward in-state tracks. *See, e.g., Granholm*, 544 U.S. at 466, 468, 474 (invalidating state laws “[i]n many parts of the country” that “increase the cost of out-of-state” goods and thereby “make [] sales impractical from an economic standpoint”); *Cherry Hill Vineyards, LLC v. Lilly*, 553 F.3d 423, 432 (6th Cir. 2008) (holding that an “in-person purchase requirement benefits local [businesses] because it ‘grants in-state [businesses] access to the State’s consumers on preferential terms’ by driving up the cost of out-of-state [goods], as condemned in *Granholm*”).

6. State officials do not ordinarily sit idly by and let state laws go unenforced for decades under their watch. So it is remarkable—yet unsurprising—that Commission officials have let this particular Texas requirement become dormant. After all, state officials have a higher duty: to uphold the Constitution. Indeed, discrimination by one state against the interests of another ranked among the primary evils our Founders sought to eliminate. *See, e.g., Granholm*, 544 U.S. at 472 (recognizing “a central concern of the Framers that was an immediate reason for calling the Constitutional Convention: the conviction that in order to succeed, the new Union would have to avoid the tendencies toward economic Balkanization that had plagued relations among the Colonies and later among the States under the Articles of Confederation”) (quotations omitted).

7. The Commission has recently indicated, however, that it is abandoning this decades-long truce—and the respect for our Founding principles and constitutional rights it reflects. It is doing so for one simple, but impermissible, reason: to generate more revenue for the Commission, by shifting market share from out-of-state to in-state race tracks.

8. A significant portion of the Commission’s budget comes from revenues from Texas tracks. The Commission makes no money when a Texan wagers on an out-of-state race,

unless it is funneled through a Texas track. So in 2011, during the Commission’s legislative reauthorization process, the Legislature indicated that the Commission could make up for anticipated shortfalls in its budget, simply by enforcing its longstanding (but unconstitutional) in-person requirement.

9. Raising revenue is a valid government function. But it is not a valid justification for discriminating against out-of-state businesses and their in-state customers. *See, e.g., C & A Carbone v. Clarkstown*, 511 U.S. 383, 393 (1994) (“of course, revenue generation is not a local interest that can justify discrimination against interstate commerce”).

10. What’s more, this case presents a double violation of the dormant Commerce Clause. That is because Texas law not only inflicts pernicious discriminatory effects on out-of-state businesses, but because that is precisely its purpose: As the legislative history confirms, the sole motivation for reaffirming the in-person requirement in 2011 was to harm out-of-state businesses, and help in-state businesses, in order to direct more revenue into state coffers.

11. Accordingly, Plaintiffs seek declaratory and injunctive relief to prevent enforcement of long-dormant provisions of Texas law—and to restore long-standing preexisting Texas practice.

PARTIES

12. Plaintiff Churchill Downs Incorporated is a publicly-traded corporation with its principal place of business in Kentucky. The company owns and operates Churchill Downs race track in Louisville, which has hosted and accepted wagers on the Kentucky Derby, the most renowned horse racing event in the world, since 1875. The company also owns and operates other horse racing tracks in Illinois, Florida, and Louisiana, which host and accept wagers on a number of horse races.

13. Plaintiff Churchill Downs Technology Initiatives Company is a Delaware corporation wholly owned by Churchill Downs Inc. It does business as TwinSpires and owns and operates online wagering platforms including TwinSpires.com that allow customers to place wagers on horse races hosted by Churchill Downs Inc. race tracks and other race tracks around the world—a practice known within the industry as advance deposit wagering, or “ADW.” Plaintiffs will hereafter be referred to collectively as “Churchill Downs.”

14. Defendants Chuck Trout, Gary P. Aber, Susan Combs, Ronald F. Ederer, Gloria Hicks, Michael F. Martin, Allan Polusky, Robert Schmidt, John T. Steen III, and Vicki Smith Weinberg are, respectively, the Executive Director and members of the Texas Racing Commission, which is located at 8505 Cross Park Dr., #110, Austin, Texas 78754. The Commission has the authority to administer and enforce the statutory and regulatory provisions at issue in this case. These individuals are sued in their official capacity.

JURISDICTION AND VENUE

15. Federal subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331 because this action challenges the constitutionality of several provisions of Texas law under the dormant Commerce Clause of the United States Constitution. U.S. Const. art. I, § 8, cl. 3. Federal subject matter jurisdiction is also proper in this court pursuant to 28 U.S.C. § 1334 because this action seeks to redress the deprivation, under color of state statute, of rights secured by the United States Constitution pursuant to 42 U.S.C. § 1983 and to secure equitable and other relief under an act of Congress for the protection of civil rights.

16. Personal jurisdiction is proper in this Court because all Defendants reside in Texas, the Texas Racing Commission is located in this judicial district, and the Executive Director and members of the Commission perform their official duties in this district.

17. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b). All Defendants reside in Texas. The Texas Racing Commission is located in this judicial district, and the Executive Director and members of the Commission perform their official duties in this district.

FACTUAL BASIS FOR COMPLAINT

I. Texas Has Required Wagers On Horse Races To Be Placed In Person Since 1986—Yet Has Allowed Texans To Wager On Races By Telephone Or Internet For Years.

18. Since the enactment of the original Texas Racing Act in 1986, state law has always required that any Texan wishing to wager on a horse race must do so in person. It does so through a series of provisions that (a) authorize licensed Texas race tracks to collect wagers from an individual who is present at the track—including wagers on races that take place live at that track, as well as out-of-state races that the track agrees to simulcast there, and (b) prohibit anyone from accepting a wager from a person in Texas by any other means.

a. Under the Texas Racing Act of 1986, “[w]agering may be conducted only by an association within its enclosure.” Tex. Rev. Civ. Stat. Art. 179e, § 11.01 (Vernon 1986). “Only a person inside the enclosure where a race meeting is authorized may wager on the result of a race presented by the association by contributing money to the pari-mutuel pool operated by the association.” *Id.* § 11.04(a). “A person shall not wager on the result of a greyhound race or horse race in this state except as permitted by this Act.” *Id.* § 11.05.

b. The Legislature maintained the in-person requirement when it amended the Act in 1991. It also added the following language to further reinforce the in-person requirement: “Nothing in this Act is to be construed to allow wagering in Texas on simulcast races at any location other than a racetrack licensed under this Act that has been granted live race dates by the commission.” Tex. Rev. Civ. Stat. Art. 179e,

§ 11.011(f) (Vernon 1991). “Only a person inside the enclosure where both live and simulcast race meetings are authorized may wager on the result of a live or simulcast race presented by the association in accordance with commission rules.” *Id.* § 11.04(a).

19. Not surprisingly, in light of the clarity of this statutory language, it is undisputed that state law has long required Texans who wish to wager on horse races to do so in person—and that this requirement existed well before the Legislature reauthorized the Commission in 2011. For example, according to a report published by the Texas Racing Commission on January 13, 2011—months before the enactment of the Commission reauthorization bill—“Internet wagering is illegal in Texas.” Texas Racing Commission, *Study of the Current State of Horse and Greyhound Racing in Texas and Industry Recommendations for Improvement* at 12, available at <http://www.txrc.state.tx.us/agency/news/postings/Report-Current-State-of-Texas-Racing.pdf>. See also <http://www.paceadvantage.com/forum/showpost.php?p=1182890&postcount=83> (quoting e-mail from Chuck Trout) (“The Texas Racing Act has long specified that pari-mutuel wagers in Texas may only be taken within the enclosure of a Texas track. . . . ADW transactions have always been illegal in Texas.”).

20. Yet, notwithstanding undisputed state law on the books for a quarter of a century, Texans have placed wagers on out-of-state horse races, including races at tracks owned by Churchill Downs Inc., via telephone or Internet since the 1990s. And the Commission has allowed this to happen.

21. This is telling. After all, state officials are duty bound to enforce Texas law. *See Tex. Const. art. XVI, § 1.* So state officials ordinarily do not sit on their hands and allow laws to go unenforced.

22. But there is an important exception. State officials have a higher duty: to uphold the Constitution of the United States. As the Texas Supreme Court has unanimously stated, “[t]he Constitution is the fundamental law and must obtain over any legislative act in contravention thereof. . . . If the legislative act is in contravention of the Constitution *the officer should obey the Constitution.* . . . A legislative act which is in conflict with the Constitution is stillborn and of no force or effect—impotent alike to confer rights or to afford protection.” *Corsicana Cotton Mills, Inc. v. Sheppard*, 71 S.W.2d 247, 251 (Tex. 1934) (emphasis added). See also *Norton v. Shelby County*, 118 U.S. 425, 442 (1886) (same).

II. During The Commission’s Legislative Reauthorization Process In 2011, The Legislature Suggested The Commission Might Address Budget Shortfalls By Enforcing The Longstanding—But Unenforced—In-Person Requirement.

23. As part of the Commission’s 2011 omnibus reauthorization bill, the Legislature included additional language reaffirming longstanding Texas law requiring any horse race wagers to be placed in person. This language was buried as part of a much larger omnibus bill and garnered very little discussion. But the limited discussion confirmed two things: (1) that the language simply clarifies and reaffirms the long-standing in-person requirement, and (2) the reason the Legislature did so was to encourage the Commission to enforce the in-person requirement and harm out-of-state businesses, in order to favor in-state businesses and thereby generate greater revenue to cover anticipated shortfalls in the Commission’s own budget.

24. The 2011 reauthorization bill makes certain minor changes to the language in the Racing Act concerning the in-person requirement, but in no way alters its meaning and effect. Indeed, much of the language remains substantially identical to the 1986 Act and the 1991 amendments. The Act now reads, in relevant part, as follows:

a. “Wagering may be conducted only by an association within its enclosure. A person may not accept, in person, by telephone, or over the Internet, a wager for a horse race or greyhound race conducted inside or outside this state from a person in this state unless the wager is authorized under this Act.” Tex. Rev. Civ. Stat. Art. 179e, § 11.01 (Vernon 2011).

b. “Nothing in this Act is to be construed to allow wagering in Texas on simulcast races at any location other than a racetrack licensed under this Act that has been granted live race dates by the commission.” *Id.* § 11.011(f).

c. “Only a person inside the enclosure where both live and simulcast race meetings are authorized may wager on the result of a live or simulcast race presented by the association in accordance with commission rules. Except as provided by this section, a person may not place, in person, by telephone, or over the Internet, a wager for a horse race or greyhound race conducted inside or outside this state.” *Id.* § 11.014(a).

d. “A person shall not wager on the result of a greyhound race or horse race in this state except as permitted by this Act. A person who is not an association under this Act may not accept from a Texas resident while the resident is in this state a wager on the result of a greyhound race or horse race conducted inside or outside this state.” *Id.* § 11.015.

25. Under the 2011 amendments, the Act now explicitly refers to the Internet. But there is no doubt that previous statutory language likewise applied to the Internet. To use an analogy, Congress could propose, and the states could ratify, an amendment clarifying that the First Amendment expressly applies to the Internet. But such an alteration would merely clarify

what we already know about the First Amendment. It would in no way change the preexisting meaning and force of the First Amendment.

26. Indeed, the limited legislative history of the in-person language of the reauthorization bill confirms that this language does indeed do nothing more than clarify—and thus reaffirm—long-standing Texas law. The summary of the enrolled bill states that it “*clarifies* that all unlicensed entities are prohibited from accepting wagers placed by Texas residents.” Enrolled Bill Summary, Tex. H.B. 2271, 82nd Leg., R.S. (2011) (emphasis added). The official House Committee Report prepared for the reauthorization bill stated that it does nothing more than “*clarify* that no entity, including out-of-state businesses that offer online or phone accounts, can accept wagers on horse or greyhound races by Texas bettors unless sanctioned by the Act.” House Comm. on Licensing & Admin. Procedures, Bill Analysis, Tex. H.B. 2271, 82nd Leg., R.S. (2011), *available at* <http://www.legis.state.tx.us/tlodocs/82R/analysis/pdf/HB02271H.pdf> (emphasis added). And the sponsor of the reauthorization bill, Representative Rafael Anchia, stated during the floor debate that the bill merely “makes it clear that [accepting wagers over the internet is] illegal.” Tex. H.R. Deb. (April 8, 2011), *transcript available at* <http://www.texastribune.org/session/82R/transcripts/2011/4/8/house/>.

27. The limited legislative history also reveals the sole motivation behind reaffirming the in-person requirement: to encourage the Commission to cover anticipated budget shortfalls by enforcing laws that discriminate against out-of-state businesses in favor of in-state businesses, and thereby raise additional revenue for the Commission.

a. Tellingly, an analysis of the reauthorization bill by the Texas House Research Organization confirmed that bill supporters were explicitly targeting “out-of-state” interests—repeatedly referring to the need to stop “out-of-state businesses” and

“out-of-state companies” from “taking bets from Texas residents.” House Research Organization, Bill Analysis, Tex. H.B. 2271, 82nd Leg., R.S. (2011), *available at* <http://www.hro.house.state.tx.us/pdf/ba82r/hb2271.pdf>.

b. During the floor debate, Representative Anchia also confirmed that the legislation was intended to protect the economic interests of Texas race tracks against out-of-state companies:

Representative Anchia: One of the things that’s hurting the track and reducing the handle at Texas tracks is internet gaming. . . . This makes it clear that [internet gaming is] illegal.

. . .

Representative James White: So you mean the internet guys—who are the internet guys? Where are they? Are they at home or where are they?

Representative Anchia: They’re all over the place. I mean they are typically in other states in the United States. They’re typically outside of Texas yet they don’t have a license in the State of Texas, yet they’re accepting wagers in the state over the internet.

Tex. H.R. Deb. (April 8, 2011), *transcript available at* <http://www.texastribune.org/session/82R/transcripts/2011/4/8/house/>.

28. The Legislature sought to reduce market share for out-of-state race tracks, and increase market share for in-state race tracks, for one simple reason: to generate more revenue for the Commission. A significant portion of the budget for the Racing Commission is derived from revenues earned by Texas race tracks. As out-of-state race tracks have become more and more competitive with in-state race tracks, the amount of wagers placed at Texas race tracks has decreased—and the State’s revenues from horse racing have decreased along with it. The inverse is also true: Reducing market share for Churchill Downs and other out-of-state

businesses will lead to an increase in the amount wagered at Texas tracks, and thus increase the revenues the State captures.

29. This revenue motivation is reflected in the legislative history:

Representative Anchia: One of the things that's hurting the track and reducing the handle at Texas tracks is internet gaming.

...

Representative Ralph Sheffield: The Racing Commission is obviously—for the last decade has really been pretty much in a defunct, has it not, as far as going down; as far as revenues?

Representative Anchia: Well, racing in Texas, the handle in racing and the attendance in racing has been in decline probably since 1992. I mean there was a spike in 1991, I believe, and then right after that there's been a steady decline to where the handle is about 163 million dollars lower than it was in its heyday.

Representative Sheffield: When the Racing Commission was set up was it not to be a little more self-sufficient on funding itself?

Representative Anchia: Yes, that's one of the issues that we deal with here in the bill. In fact, we—the revenue—excuse me, the Racing Commission will be self-leveling, completely self-leveling after there. .

..

...

Representative Jason Isaac: Representative Anchia, is it your understanding that the Texas Racing Commission will not receive funding from general revenue?

Representative Anchia: That is correct. After this bill we expect it to be completely self-leveling.

Tex. H.R. Deb. (April 8, 2011), *transcript available at* [*http://www.texastribune.org/session/82R/transcripts/2011/4/8/house/*](http://www.texastribune.org/session/82R/transcripts/2011/4/8/house/).

III. Enforcement Of The In-Person Requirement Would Deprive Churchill Downs And Its Texas Customers Of Their Constitutional Rights Under the Commerce Clause.

30. In response to the Legislature's revenue recommendations, Commission officials have begun efforts to enforce the in-person requirement against Churchill Downs.

31. On October 14, 2011, the Commission sent a letter to Churchill Downs stating that the company may be engaging in conduct prohibited by the in-person requirement—but long accepted by Commission officials—namely, the acceptance of wagers from Texans through its Internet wagering platform, TwinSpires.com. On December 20, 2011, the Commission sent a follow-up letter informing Churchill Downs of a proposed administrative rulemaking proceeding regarding the in-person requirement. At the request of the Commission, Churchill Downs responded with a timely letter detailing the longstanding industry objections to the constitutionality of the Texas in-person requirement on January 23, 2012. The Commission did not respond to that letter.

32. On June 26, 2012, the Commission issued a subpoena to Churchill Downs, seeking certain information and documents regarding the company's acceptance of wagers from Texas. The subpoena sought, among other things, information regarding every TwinSpires.com account holder who principally resides in Texas, as well as data on wagers accepted from such account holders.

33. Following subsequent discussions, the Commission agreed to give Churchill Downs until September 25, 2012, to choose from one of three options: (1) comply with the subpoena, (2) cease accepting wagers from Texas, or (3) initiate litigation to resolve the constitutional issues presented by the Texas in-person requirement.

34. Churchill Downs is harmed by the in-person requirement and the Commission's attempts to enforce it.

35. Churchill Downs wishes to collect wagers directly from individuals in Texas through means other than an in-person transaction, including but not limited to accepting wagers over the Internet through its TwinSpires.com wagering platform. The in-person requirement prevents Churchill Downs and TwinSpires.com from doing so.

36. The in-person requirement further harms Churchill Downs by preventing any of its out-of-state race tracks from accepting wagers from Texans unless it is willing to (1) funnel wagers through one of its Texas competitors (assuming they agree to do so), (2) establish its own track in Texas (assuming the Commission agrees to allow it), or (3) require its customers to cross state lines in order to place a wager.

37. As a result, Churchill Downs faces greater costs and reduced profits, as well as a loss of market share, particularly as compared to in-state race tracks.

38. Indeed, the Texas in-person requirement effectively prevents Churchill Downs from receiving wagers on any of its out-of-state races from the vast majority of Texans, unless it is able to secure the consent of one of its in-state competitors, and unless it is willing to subject itself to whatever marketing conditions the in-state track demands and accept whatever host fee the in-state track deigns to offer. This places Churchill Downs and all other out-of-state race tracks at a dramatic competitive disadvantage vis-à-vis Texas tracks, by giving their in-state competitors virtual control over their ability to access and succeed in the Texas wagering market.

39. The Texas in-person requirement discriminates against out-of-state businesses such as Churchill Downs in favor of in-state businesses, not only in practical effect, but also on purpose.

40. Accordingly, the Texas in-person requirement constitutes a facial violation of the dormant Commerce Clause.

41. It also violates the dormant Commerce Clause as applied to Churchill Downs, insofar as it prohibits Churchill Downs—an established, publicly-traded company with a distinguished American tradition—from directly accepting wagers from individuals in Texas through methods other than in person.

CLAIMS FOR RELIEF

Count One: Violation of Civil Rights Act (42 U.S.C. § 1983)

42. Plaintiffs incorporate by reference each preceding paragraph of the Complaint as if fully restated herein and further allege as follows:

43. Defendants are individuals who, under color of statute, ordinance, regulation, custom, or usage, of the State of Texas, are subjecting, or causing to be subjected, Plaintiffs to the deprivation of rights, privileges, or immunities secured by the Constitution and laws of the United States—specifically, the Commerce Clause of the United States Constitution.

44. Defendants' conduct violates 42 U.S.C. § 1983.

45. Without relief from this Court, Defendants, acting under color of statute, ordinance, regulation, custom, or usage, of the State of Texas, will continue to subject, or cause to be subjected, Plaintiffs to the deprivation of rights, privileges, or immunities secured by the Constitution and laws of the United States.

Count Two: Declaratory Relief (22 U.S.C. § 2201)

46. Plaintiffs incorporate by reference each preceding paragraph of the Complaint as if fully restated herein and further allege as follows:

47. A defined and concrete controversy of a justiciable nature exists between Plaintiffs and Defendants concerning the constitutionality of the Texas in-person requirement.

Plaintiffs claim the laws violate the Commerce Clause of the United States Constitution, facially and as applied to Plaintiffs, while Defendants maintain that the laws are valid and enforceable.

48. Pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, this Court should determine Plaintiffs' and Defendants' rights and duties and declare that the Texas in-person requirement violates the Commerce Clause of the U.S. Constitution and is therefore invalid and unenforceable, both facially and as-applied to Plaintiffs.

Count Three: Equitable and Ancillary Relief (28 U.S.C. § 2202)

49. Plaintiffs incorporate by reference each preceding paragraph of the Complaint as if fully restated herein and further allege as follows:

50. Plaintiffs, as a consequence of the unconstitutionality of the Texas in-person requirement and the violation of their constitutional rights, are entitled to equitable and ancillary relief, including preliminary and permanent injunctive relief.

51. Permanent injunctive relief is justified because Plaintiffs have no adequate or complete remedy to redress the wrongs herein complained of other than through injunctive relief. Any other remedy this Court may award would require a multitude of additional suits, impose further irreparable injury to Plaintiffs, and would be inadequate to protect Plaintiffs from the continuing enforcement of the Texas in-person requirement, in violation of Plaintiffs' rights, privileges, or immunities as secured by the Constitution and laws of the United States.

52. Preliminary injunctive relief is also justified because Plaintiffs are likely to succeed on the merits, enforcement of the Texas in-person requirement would cause Plaintiffs irreparable injury, Plaintiffs will suffer greater harm than Defendants if an injunction does not issue, and an injunction is in the public interest.

53. Pursuant to 28 U.S.C. § 2202, this Court should grant Plaintiffs preliminary and permanent injunctive relief enjoining Defendants and their agents, servants, employees, and all other persons acting on behalf of, under the authority of, or in concert with them, from enforcing the Texas in-person requirement.

PRAYER FOR RELIEF

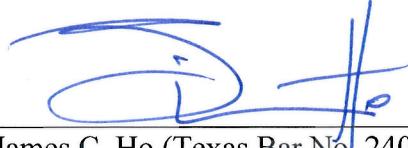
WHEREFORE Plaintiffs respectfully request that this Court:

- A. Enter Judgment in Plaintiffs' favor;
- B. Declare that the Texas in-person requirement violates the U.S. Constitution, both facially and as applied to Plaintiffs, and is therefore unenforceable;
- C. Issue a preliminary and permanent injunction enjoining Defendants and their agents, servants, employees, and all other persons acting on behalf of, under the authority of, or in concert with them, from enforcing or giving any effect to the Texas in-person requirement, as codified in Texas Racing Act §§ 11.01, 11.011, 11.014, and 11.015;
- D. Award Plaintiffs their reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and
- E. Grant any and all other relief that the Court deems appropriate.

Dated: September 21, 2012

Respectfully submitted,

By:



James C. Ho (Texas Bar No. 24052766)
Prerak Shah (Texas Bar No. 24075053)

Pro Hac Vice Motion Pending

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COUNSEL FOR PLAINTIFFS

JS 44 (Rev. 09/11)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Churchill Downs Incorporated; Churchill Downs Technology Initiatives Company, doing business as TwinSpires.com;

(b) County of Residence of First Listed Plaintiff Jefferson County, KY
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS
(see attachment)

County of Residence of First Listed Defendant Travis County, TX

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
Unknown

(c) Attorneys (Firm Name, Address, and Telephone Number)
James C. Ho and Prerak Shah; Gibson, Dunn & Crutcher LLP; 2100 McKinney Avenue, Suite 1100, Dallas, Texas 75201;

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question
(U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity
(Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ft) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	CIVIL RIGHTS Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(Place an "X" in One Box Only)

- | | | | | | |
|---|---|--|---|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation |
|---|---|--|---|--|---|

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 1983; 22 U.S.C. § 2201; 28 U.S.C. § 2202; 42 U.S.C. § 1988

Brief description of cause:
Texas law requiring in-person wagering on horse races violates Plaintiffs' rights under the Commerce Clause.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMANDS

CHECK YES only if demanded in complaint:

*Declaratory and Injunctive Relief***JURY DEMAND:** Yes No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

9/21/12

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

CIVIL COVER SHEET – ATTACHMENT

I. (a) Defendants

Texas Racing Commission: Chuck Trout, Executive Director

Texas Racing Commission: Gary P. Aber, Commissioner

Texas Racing Commission: Susan Combs, Commissioner

Texas Racing Commission: Ronald F. Ederer, Commissioner

Texas Racing Commission: Gloria Hicks, Commissioner

Texas Racing Commission: Michael F. Martin, Commissioner

Texas Racing Commission: Allan Polunsky, Commissioner

Texas Racing Commission: Robert Schmidt, Commissioner

Texas Racing Commission: John T. Steen III, Commissioner

Texas Racing Commission: Vicki Smith Weinberg, Commissioner