

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ORLEANS

GENESEE COUNTY,
ORLEANS COUNTY,
NIAGARA COUNTY,
LIVINGSTON COUNTY,
WYOMING COUNTY, and
SENECA COUNTY,

Index No.

Plaintiffs,

SUMMONS

v.

NEW YORK STATE,
KATHY HOCHUL, in her official capacity
as New York State Governor,
LETITIA JAMES, in her official capacity
as New York State Attorney General,
NEW YORK STATE SENATE, and
NEW YORK STATE ASSEMBLY,

Defendants.

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs' attorney(s) within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiffs designate Orleans County as the place of trial. This action is brought in Orleans County because it is the location of Plaintiff Orleans County's principal place of business and where a substantial part of the events or omissions giving rise to this action occurred.

Dated: Buffalo, New York
September 20, 2023

Lippes Mathias LLP

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GENESEE COUNTY,
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Plaintiffs,

COMPLAINT

vs.

NEW YORK STATE,
KATHY HOCHUL, in her official capacity
as New York State Governor,
LETITIA JAMES, in her official capacity
as New York State Attorney General,
NEW YORK STATE SENATE, and
NEW YORK STATE ASSEMBLY

Defendants.

Plaintiffs Genesee County, Orleans County, Niagara County, Livingston County,
Wyoming County, and Seneca County (hereinafter “Plaintiffs”), by and through their attorneys,
Lippes Mathias LLP, as and for their Complaint herein, come forth and allege as follows:

NATURE OF ACTION

1. This action stems from the unconstitutional amendment to Article V of the Racing, Pari-Mutuel Wagering and Breeding Law through the enactment of New York State’s Education, Labor and Family Assistance Bill for 2023-2024 (A3006-C/S4006-C), which the Legislature passed on May 2, 2023, and the Governor signed into law on May 3, 2023 (the “ELFA Bill”). *See* L.2023, c. 56, pt. JJ, § 1, eff. May 3, 2023.

2. Specifically, Part JJ of the ELFA Bill amended Article V of the Racing, Pari-Mutuel Wagering and Breeding Law (the “Racing Law”) through the addition of a new Section 502-a, which is only applicable to the governance, operation, and control of Western Regional Off-Track Betting Corporation (“WROTB”). Notably, the governance, operation, and control of other New York off-track betting corporations remain governed by Section 502 of the Racing Law.

3. Since the creation of WROTB in 1974, Section 502 of the Racing Law provided that each participating county, such as Plaintiffs, through the appointment of a board member received equal voting power in the management and operation of the WROTB. Stated succinctly, the law was: one county, one vote.

4. The newly enacted Section 502-a of the Racing Law, however, has displaced the “one county, one vote” model of the WROTB with a population-based model that weights each participating county’s vote based on its population. As a result, notwithstanding the fact the WROTB concerns the property, affairs, and government of each participating county, the power to manage and operate the WROTB has been - in effect - consolidated into four members: Erie County, Monroe County, the City of Buffalo, and the City of Rochester.

5. Accordingly, as provided in more detail herein, Section 502-a of the Racing Law is unconstitutional because it violates:

- a) Article IX of the New York State Constitution, which requires a Special Law that affects the property, affairs, or government of any local government to be passed (1) on request of two-thirds of the total membership of the local government’s legislative body or on request of local government’s chief executive officer concurred in by a majority of such membership, or (2) by a certificate of necessity from the Governor that recites facts sufficiently demonstrating an emergency

requiring enactment with the concurrence of two-thirds of the members elected to each house of the New York Legislature (N.Y. Const., Art. IX § 2(b)(2));

- b) The Doctrine of Legislative Equivalency, which requires that an enactment cannot be modified or repealed except by the use of procedures equivalent to those used for the original enactment; and
- c) Article IX of the New York State Constitution, which requires that the powers granted to Plaintiffs under the New York Constitution and Statute of Local Governments may only “be repealed, diminished, impaired or suspended [] by enactment of a statute by the legislature with the approval of the governor at its regular session in one calendar year and the re-enactment and approval of such statute in the following calendar year.” N.Y. Const., Art. IX § 2(b)(1).

6. Therefore, Plaintiffs seek a declaratory judgment as to the rights and other legal relations of the parties and the constitutionality and enforceability of Section 502-a of the Racing Law pursuant to, *inter alia*, CPLR § 3001; Municipal Home Rule Law Article 2 § 10, and the Home Rule powers provided by Article IX § 2 of the New York State Constitution, ultimately declaring Section 502-a of the Racing Law unconstitutional, invalid, and unenforceable.

JURISDICTION AND VENUE

7. This is an action in equity and law and Plaintiffs are not required to file a notice of claim or notice of intention to sue.

8. This is a declaratory judgment action pursuant to CPLR § 3001 and the Supreme Court is the appropriate venue for challenging the constitutionality of a statute. Venue is specifically appropriate in Orleans County under CPLR § 503(a) as a substantial part of the events giving rise to the claim occurred in this county and Orleans County is a plaintiff in this action.

9. This action is further authorized insofar as the Section 502-a of the Racing Law adversely affects Plaintiffs' proprietary interest in the specific revenue generated through the operation of the "WROTB", and this action is further authorized as Section 502-a violates Plaintiffs' Home Rule powers provided by Article IX of the New York State Constitution.

PARTIES

10. Plaintiff Genesee County is a municipal corporation duly organized under the Constitution and laws of the State of New York. Plaintiff Genesee County is a founding member of the WROTB.

11. Plaintiff Niagara County is a municipal corporation duly organized under the Constitution and laws of the State of New York. Plaintiff Niagara is a founding member of the WROTB.

12. Plaintiff Orleans County is a municipal corporation duly organized under the Constitution and laws of the State of New York. Plaintiff Orleans is a founding member of the WROTB.

13. Plaintiff Wyoming County is a municipal corporation duly organized under the Constitution and laws of the State of New York. Plaintiff Wyoming is a founding member of the WROTB.

14. Plaintiff Seneca County is a municipal corporation duly organized under the Constitution and laws of the State of New York. Plaintiff Seneca is a founding member of the WROTB.

15. Plaintiff Livingston County is a municipal corporation duly organized under the Constitution and laws of the State of New York. Plaintiff Livingston is a founding member of the WROTB.

16. Defendant New York State is sovereign entity organized under the New York State Constitution. Defendant New York State has an interest and right to be heard on matters concerning the constitutionality of its statutes.

17. Defendant Kathy Hochul is the Governor of the State of New York and is named in her official capacity. Governor Hochul is the State's Chief Executive Officer and is responsible for executing the laws of New York State.

18. Defendant Letitia James is New York State Attorney General and is named in her official capacity. Attorney General James is charged with defending state statutes whenever the constitutionality of a statute is brought into question.

19. Defendant New York State Senate is the upper house of the New York State Legislature that passed the ELFA Bill ultimately leading to the enactment of Section 502-a of the Racing Law.

20. Defendant New York State Assembly is the lower house of the New York State Legislature that passed the ELFA Bill ultimately leading to the enactment of Section 502-a of the Racing Law.

FACTUAL ALLEGATIONS

I. Legislative History Establishing Regional OTBs

21. In 1939, the New York Constitution, Article I, § 9 was amended to provide “no ... gambling, except [state] lotteries ... and ... pari-mutuel betting on horse races as may be prescribed by the legislature and from which the state shall derive a reasonable revenue for the support of government, shall hereafter be authorized or allowed within this state...” N.Y. Const. Art. 1, § 9.

22. Shortly thereafter, in 1940, the New York State Legislature enacted the Racing, Pari-Mutuel Wagering and Breeding Law to establish racing commissions and govern pari-mutuel betting on horse racing. L.1940, ch. 254.

23. Prior to 1970, pari-mutuel betting was restricted to the grounds of harness or thoroughbred racetracks, which left an illegal niche for local bookmakers who took bets from those individuals who gambled on horse racing but were unwilling to travel to the racetrack to place their wagers. *See Matter of Suffolk Regional Off-Track Betting Corp. v. New York State Racing & Wagering Bd.*, 11 N.Y.3d 559 (2008).

24. In 1970, to close this loophole and to enhance the revenues of local governments, the Legislature established off-track pari-mutuel betting, providing for the reimbursement of moneys to the tracks for revenues lost on account of decreases in their “handle” and attendance caused by such betting. *See L.1970, ch.143.*

25. The newly enacted legislation, however, caused more harm than good to racetracks in the State and the local breeding industry. *See Finger Lakes Racing Assn. v. New York State Racing & Wagering Bd.*, 45 N.Y.2d 471 (1978).

26. To redress the situation, the Legislature in 1973 created seven regional off-track betting corporations (hereinafter, “OTBs”) to administer off-track wagering and required them to pay a “state tax,” which provided revenue to the regional harness tracks and nonprofit racing associations. *See L. 1973, ch. 346, § 4, as amended.*

27. Specifically, Section 519 of the Racing Law established the OTB regions as follows:

- a. Suffolk Region – Suffolk County;
- b. Nassau Region – Nassau County;
- c. New York City Region– the five counties comprising the City of New York;
- d. Catskill Region – Broome, Chemung, Chenango, Delaware, Orange, Rockland, Sullivan, Tioga, Dutchess, Tompkins, Westchester, Putnam and Ulster counties;

- e. Capitol District Region– Albany, Clinton, Columbia, Cortland, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Madison, Montgomery, Oneida, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, St. Lawrence, Warren and Washington counties;
 - f. Central District Region – Lewis and Onondaga counties; and
 - g. Western Region – Allegany, Cattaraugus, Cayuga, Chautauqua, Erie, Genesee, Jefferson, Livingston, Monroe, Niagara, Ontario, Orleans, Oswego, Schuyler, Seneca, Steuben, Wayne, Wyoming and Yates counties.
28. Through the creation of the OTBs, it was the Legislature’s intent:

“to derive from such betting ... a reasonable revenue for the support of government, and to prevent and curb unlawful bookmaking and illegal wagering on horse races. It is also the intention of this article to ensure that off-track betting is conducted in a manner compatible with the well-being of the horse racing and breeding industries in this state, which industries are and should continue to be major sources of revenue to state and local government and sources of employment for thousands of state residents.”

Racing Law § 518.

II. The Creation of the WROTB

29. The Legislature created the regional OTBs as public benefit corporations subject to the passage of enabling legislation by participating counties. *See* Racing Law § 502.

30. In September 1973, in accordance with Article V of the Racing Law, the WROTB was formed by eleven Western New York counties, namely, Cattaraugus, Chautauqua, Erie, Genesee, Livingston, Monroe, Niagara, Orleans, Seneca, Steuben, and Wayne, and two cities, Buffalo and Rochester.

31. The formation of the WROTB required passage of enabling legislation by at least three counties comprising not less than thirty percent of the population of the Western Region. A city with a population of more than 150,000 – such as Buffalo and Rochester – was also permitted

to become a member of a regional OTB if the county in which such city is located elected to become a participating member. Racing Law § 502(1)-(3).

32. Specifically, participating counties were required to pass a local law, ordinance or resolution subject to a permissive referendum in accordance with the Municipal Home Rule Law to participate in the operation of the WROTB.

33. For example, on August 3, 1973, Plaintiff Genesee County passed a resolution authorizing the county to participate in the administration of WROTB “in order to permit [Genesee County] to derive income from the source of off-track betting, attempt to protect the vital racing industry already established with [Genesee County] and for the purpose of fighting organized crime.”¹

34. Ultimately, through the passage of the enabling legislations and providing initial funding to the corporation, Plaintiffs and the other counties forming the WROTB became stakeholders of the corporation.

35. Indeed, Plaintiffs’ initial investments collectively totaled \$98,844: Niagara County invested \$55,362, Genesee County invested \$13,794, Livingston County invested \$12,690, Orleans County invested \$8,760, and Seneca County invested \$8,238.

36. Four additional counties – Cayuga, Oswego, Schuyler, and Plaintiff Wyoming – joined the WROTB after its original formation in 1973.

37. Since 1979, the WROTB has been comprised of the 15 above-referenced counties and the cities of Buffalo and Rochester.

¹ A copy of the Genesee County Resolution is attached hereto as Exhibit A.

III. Governance, Powers, and Revenues of OTBs

38. With respect to governance, the Racing Law provides that “[e]ach corporation shall be administered by a board of directors consisting of two members from each participating county containing a city of over one hundred fifty thousand in population, according to the last federal census, and one member from each other participating county.” Racing Law § 502(1).

39. The powers of the OTBs are vested in the board of directors of the OTB. An OTB’s board of directors is authorized to exercise the powers of the corporation at a meeting. This requires a quorum to be present at said meeting, which is a majority number of an OTB’s total number of directors. If a quorum is present, the OTB may exercise its powers and transact business upon a majority vote of the directors present at the meeting. *See* Racing Law § 502(8).

40. Notably, pursuant to Section 502 of the Racing Law, the votes of the participating counties comprising an OTB corporation are equally weighted.

41. Upon a majority vote, the board of directors of any OTB has the authority to: (1) sue and be sued; (2) acquire, hold, lease, rent and dispose of personal property for its corporate purposes; (3) acquire, in the name of the corporation, real property that is necessary or convenient for carrying out its corporate purposes; (4) make by-laws for the management and regulation of its affairs; (5) make contracts and leases, and to execute all instruments necessary or convenient to accomplish its corporate purposes; (6) accept grants, loans and contributions and to use the same or expend the proceeds thereof for its corporate purposes; (7) construct such buildings, structures and facilities as may be necessary; and (8) perform such other acts and engage in such other activities as may be necessary and proper for exercising its powers and performing its duties under Article V of the Racing Law. *See* Racing Law § 503.

42. As such, the Racing Law grants regional OTBs wide-ranging powers to operate and run a business, which in return generates revenue for local governments.

43. The distribution of an OTB's revenue is governed by Sections 516 and 532 of the Racing Law.

44. Section 516 of the Racing Law requires net revenues – the amount remaining after payment of all costs of the corporation – to be distributed quarterly among each OTB's participating municipalities. The formula used to calculate each county's share in the net revenue is based on the amount of wagers placed in participating county and the population of said county.

45. Specifically, fifty percent of the net revenue is distributed among the participating counties on “the basis of the proportion of the total off-track pari-mutuel wagering accepted by the corporation during the previous period that originated in the branch offices located in each participating county” and the remaining fifty percent of net revenue is distributed “on the basis of population.” Section 516(2) of the Racing Law.

46. Section 532 of the Racing Law requires each regional OTB to impose a five (5) percent surcharge on the portion of pari-mutuel wagering pools distributable to persons and to distribute said surcharge revenues monthly to participating local governments and to local governments where the tracks are located.

47. Taken together, the above-referenced sections of the Racing Law illustrate the importance and purpose of the local control and operation of the OTBs.

48. This local-centric operation of OTBs is also reflected in the stated legislative history of the Racing Law.

49. For example, Section 518 of the Racing Law states, in part, “it being the purpose of this article to derive from such betting, as authorized by this article, a reasonable revenue for the support of government, and to prevent and curb unlawful bookmaking and illegal wagering on horse races. It is also the intention of this article to ensure that off-track betting is conducted in a

manner compatible with the well-being of the horse racing and breeding industries in this state, which industries are and should continue to be major sources of revenue to state and local government and sources of employment for thousands of state residents.” Racing Law § 518.

50. Additionally, Section 1000 of the Racing Law recognizes the importance of local municipality participation in the regional OTBs through requiring “[n]o simulcasts shall be authorized which jeopardize present racing or employment opportunities or which infringe on current operations or markets of the racetracks and the regional off-track betting corporations which generate significant revenues for local governments in the state.” Racing Law § 1000.

51. The Legislature has also found that, “since its inception in 1973, New York’s regional off-track betting system has provided state and local governments with significant revenues to support government operations and to aid in reducing increases in local property taxation. The regional off-track betting system has been integrated into the state’s pari-mutuel racing and breeding industry to provide statewide accessibility and exposure to New York’s quality thoroughbred and harness racing. Such accessibility and exposure has significantly contributed to the economic well-being of New York’s racetracks, their horsemen and employees and the growth of horse breeding in the state. *See* L.2008, c. 115, § 1.

52. Ultimately, with the creation of regional OTBs, local municipalities that elected to participate in the off-track betting regions, such as Plaintiffs, became partners in the business and began to receive net revenues from the OTB operations.

53. Plaintiffs are founding members of the WROTB that, since 1973, have participated in the operation of the WROTB under Section 502 of the Racing Law whereby they received the same weighted vote as the other participating counties.

54. Through their initial investments in WROTB, Plaintiffs' have a vested and proprietary right in their voting interests in the corporation.

55. Furthermore, Plaintiffs have a proprietary right in the revenues they received from the WROTB distributions.

56. Plaintiffs' interests in the WROTB are also protected by Article IX of the New York State Constitution as the WROTB inextricably relates to the property, affairs or government of Niagara, Orleans, Genesee, Livingston, Wyoming, and Seneca Counties.

57. Indeed, the centerpiece of the WROTB is the Batavia Downs Gaming & Hotel ("Batavia Downs"), which provides the substantial majority of the revenue generated by the WROTB, and is located in Genesee County.

58. The control and operation of Batavia Downs directly concerns the property, affairs, or government of Plaintiff Genesee County as it provides substantial employment opportunity for its residents and spurs investments and commerce within its borders.

59. Furthermore, the control and operation of Batavia Downs directly affects Plaintiffs' property, affairs, or government insofar as the revenue generated from Batavia Downs is tantamount to the WROTB's existence.

IV. Section 502-a of the Racing Law

60. Through the passage of the 2023 Executive Budget, the Legislature amended the Racing Law by adding a new provision that specifically targets the WROTB – and *only* the WROTB – and adversely affects Plaintiffs' control over their property, affairs and government.

61. Specifically, On May 3, 2023, as part of an omnibus budget bill, the Racing Law was amended to add a new section numbered 502-a titled "[s]pecial Provisions with regard to the western regional off track betting corporation." L.2023, c. 56, pt. JJ, § 1, eff. May 3, 2023.

62. Through Section 502-a, the Legislature abolished the WROTB's one-county-one-vote system and established a weighted vote regime based on the population of each participating county and city.

63. Section 502-a provides the voting power of the WROTB counties and cities as follows:

- Plaintiff Niagara County shall have **eight votes**,
- Chautauqua County shall have **five votes**,
- Oswego County shall have **four votes**,
- Steuben County shall have **three votes**,
- Wayne County shall have **three votes**,
- Cattaraugus County shall have **three votes**,
- Cayuga County shall have **three votes**,
- Plaintiff Livingston County shall have **two votes**,
- Plaintiff Genesee County shall have **two votes**,
- Plaintiff Wyoming County shall have **one vote**,
- Plaintiff Orleans County shall have **one vote**,
- Plaintiff Seneca County shall have **one vote**,
- Schuyler County shall have **one vote**,
- Erie County shall have **twenty-four votes**,
- Monroe County shall have **twenty votes**,
- City of Buffalo shall have **ten votes**, and
- City of Rochester shall have **eight votes**.

See Section 502-a(4) of the Racing Law.

64. In addition to the votes distributed among the participating counties and cities, Section 502-a provides the chairperson of the WROTB with one additional vote. *See* Section 502-a(7).

65. Concerning procedure, Section 502-a states that “[m]embers representing a majority of the total voting strength of the board of directors then in office shall constitute a quorum for the transaction of any business or the exercise of any power of the corporation” and “the corporation shall have the power to act by a majority vote of the total voting strength present at any meeting at which a quorum is in attendance.” *See* Section 502-a(6).

66. Section 502-a further provides that “[n]o action shall be taken by the corporation except pursuant to the favorable vote of fifty-one percent of the total authorized voting strength of the board of directors.” Section 502-a(3).

67. As a result, Section 502-a has effectively created a regime where any action taken by the WROTB must be approved by the representatives from Erie and Monroe County with the support of either representative from the City of Buffalo or the City of Rochester.

68. Similarly, Section 502-a prevents the WROTB from convening a quorum without the attendance of the representatives of Erie and Monroe counties and at least one representative from Buffalo or Rochester.

69. Plaintiffs’ proprietary voting and property interest in the WROTB have been diminished insofar as Plaintiffs no longer have any meaningful control or input in the operation of the WROTB. Stated differently, Section 502-a has effectively rendered the votes of the remaining member counties worthless.

70. In fact, Section 502-a of the Racing Law concentrates the power of the WROTB almost entirely into Erie and Monroe County, and considering the weighted votes of the cities of Buffalo and Rochester, Section 502-a effectively creates a monopoly for Erie and Monroe Counties over the property, business transactions, and legal affairs of the WROTB.

71. Simply stated, Section 502-a of the Racing Law disinherits Plaintiffs of their proprietary rights in the WROTB and Home Rule powers in connection with the operation and management of same.

V. The Unlawful Amendment of the Racing Law

72. As referenced above, the Legislature enacted Section 502-a through the passage of the Executive Budget – more specifically, ELFA Bill. *See* L.2023, c. 56, pt. JJ, § 1, eff. May 3, 2023.

73. The Legislature produced three amended versions of the ELFA Bill prior to the presentation of the final draft on May 2, 2023: March 6, 2023 (A.B.3006-A/S.B.4006-A), March 14, 2023 (A.B.3006-B/S.B.4006-B), and May 1, 2023 (A.B.3006-C/S.B.4006-C).

74. Notably, Section 502-a of the Racing Law was included in the final amended version of the ELFA Bill, which was presented to the Legislature on May 2, 2023, and prior to the inclusion of Section 502-a in the ELFA Bill, a materially similar amendment was introduced as a non-budgetary bill but was never enacted into law. *See* N.Y. Senate Bill 2021-S7855A.

75. On May 2, 2023, the debate on the ELFA Bill was closed and Governor Hochul delivered a purported “message of necessity” for the ELFA Bill reciting:

The facts necessitating an immediate vote on the bill are as follows:
The bill is necessary to enact the 2023-2024 New York State budget.
Because the bill has not been on your desks in final form for three calendar legislative days, the Leaders of your Honorable bodies have requested this message to permit its immediate consideration.

76. The “message of necessity” clearly applied to the ELFA Bill as a whole, not specifically to Racing Law § 502-a.

77. The ELFA Bill passed both Houses of the Legislature. The New York State Assembly passed the ELFA Bill with 91 votes for and 57 votes against. The New York State Senate passed the ELFA Bill with 39 votes for and 24 votes against.

78. However, neither House passed the ELFA Bill by a two-thirds margin.

79. On May 3, 2023, Governor Hochul signed the ELFA Bill, which included the amendments to the Racing Law set forth in Section 502-a, into law.

FIRST CAUSE OF ACTION
Violation of Article IX of the New York State Constitution

80. Plaintiffs repeat and re-allege the preceding paragraphs.

81. Article IX of the New York Constitution requires that a special law that affects the property, affairs, or government of a local government to be passed on: (1) a “request of two-thirds of the total membership of its legislative body or on request of its chief executive officer concurred in by a majority of such membership” (each method of request hereinafter referred to as a “Home Rule Message”); or (2) “on certificate of necessity from the governor reciting facts which in the judgment of the governor constitute an emergency requiring enactment of such law and [...] with the concurrence of two-thirds of the members elected to each house of the legislature.” N.Y. Const., Art. IX § 2(b)(2).

82. The New York State Constitution defines a special law as, “[a] law which in terms and in effect applies to one or more, but not all, counties, counties other than those wholly included within a city, cities, towns or villages.” N.Y. Const., Art. IX § 3(d)(4).

83. Section 502-a of the Racing Law is a special law because its application is limited to certain counties affiliated with the WROTB, namely, Allegany, Cattaraugus, Cayuga, Chautauqua, Erie, Genesee, Jefferson, Livingston, Monroe, Niagara, Ontario, Orleans, Oswego, Schuyler, Seneca, Steuben, Wayne, Wyoming and Yates counties.

84. Therefore, Section 502-a of the Racing Law violates Article IX of the New York State Constitution because it is a Special Law that affects the property, affairs, or government or local government, and: (1) Section 502-a did not receive a Home Rule Message; (2) the Governor’s Message of Necessity for the ELFA Bill, as it specifically relates to the inclusion of the Section 502-a amendment, did not recite facts sufficiently demonstrating an emergency requiring

enactment of Section 502-a; and (3) the ELFA Bill – which included Section 502-a – was **not** passed by at least two-thirds of each house of the New York Legislature.

85. Based upon the foregoing conduct of the Defendants, the Plaintiffs are and will continue to be damaged by the actions of the Defendants in violation of the New York State Constitution until such time as this Court grants the relief sought herein. Accordingly, Plaintiffs seek a judgment of this Court declaring Section 502-a of the Racing Law unconstitutional, invalid, and unenforceable.

SECOND CAUSE OF ACTION Legislative Equivalency

86. Plaintiffs repeat and re-allege the preceding paragraphs.

87. In 1973, the Legislature passed legislation that provided for the enabling legislation for the creation of regional OTBs. *See* L. 1973, ch. 346.

88. The enabling legislation was passed pursuant to the “power vested in [the Legislature] by subdivision one of section nine of article one of the constitution of this state[.]” *Id.* at 1167.

89. The Legislature stated that it is the “intention of this article to ensure that off-track betting is conducted in a manner compatible with the well being of the horse racing and breeding industries in this state, which industries are and should continue to be major sources of revenue to state and local government and sources of employment for thousands of state residents.” *Id.*

90. The 1973 enabling legislation was passed during the general session of the Legislature as an independent piece of legislation – not through the budget process.

91. It is settled law in New York that an enactment cannot be modified or repealed except by the use of procedures equivalent to those used for the original enactment.

92. On May 3, 2023, the Legislature amended Section 502-a of the Racing Law through a late addition to the ELFA Bill, which is not the same manner or form in which Section 502 of the Racing Law was enacted.

93. Accordingly, Section 502-a of the Racing Law was not modified by the use of procedures equivalent to those used for the original enactment.

94. Therefore, Plaintiffs seek a judgment of this Court declaring that the Constitution and laws of the State do not permit the modification or repeal of Section 502 of the Racing Law except by means equivalent to those used to create such enactment and declaring Section 502-a of the Racing Law unconstitutional, invalid, and unenforceable.

THIRD CAUSE OF ACTION
Violation of the Double Enactment Clause of the New York State Constitution

95. Plaintiffs repeat and re-allege the preceding paragraphs.

96. Article IX the New York Constitution provides that the State Legislature:

[s]hall enact, and may from time to time amend, a statute of local governments granting to local governments powers including but not limited to those of local legislation and administration in addition to the powers vested in them by this article.

N.Y. Const., Art. IX § 2(b)(1).

97. Pursuant thereto, the Legislature passed the Statute of Local Governments that grants local governments, *inter alia*, the: “power to acquire real and personal property or any interest therein for its purposes, and to construct, reconstruct, equip, maintain, repair and operate the same for such purposes” and “power to acquire, establish, construct, reconstruct, equip, maintain, repair and operate recreational facilities on park or other lands, including but not limited to self-supporting, self-sustaining or revenue-producing recreational facilities.” N.Y. STAT LOC GOVTS § 10(2)-(3).

98. The New York Constitution further declares that “[a] power granted in [the Statute of Local Governments] may be repealed, diminished, impaired or suspended only by enactment of a statute by the legislature with the approval of the governor at its regular session in one calendar year and the re-enactment and approval of such statute in the following calendar year.” N.Y. Const., Art. IX § 2(b)(1).

99. The “double enactment” clause is intended to “afford localities protection from hasty and ill-considered legislative judgments.” *See Wambat Realty Corp. v State of New York*, 41 N.Y..2d 490 (1977).

100. Section 502-a of the Racing Law diminishes and impairs Plaintiffs proprietary interests in maintaining and operating the WROTB through divesting them of their equally-weight voting power over the administration and operation of the WROTB.

101. Section 502-a of the Racing Law effectively disenfranchises Plaintiffs from their interest to maintain, equip, repair, operate its interests in the WROTB.

102. Section 502-a of the Racing Law was not enacted in accordance with Article IX, Section 2, paragraph (b) subparagraph (1) of the New York Constitution.

103. As a result, Section 502-a of the Racing Law violates this New York Constitution as it repealed, diminished, impaired or suspended the powers granted to Plaintiff under the New York Constitution and Statute of Local Governments.

104. Based upon the foregoing conduct of the Defendants, the Plaintiffs are and will continue to be damaged by the actions of the Defendants in violation of the New York State Constitution until such time as this Court grants the relief sought herein. Accordingly, Plaintiffs seek a judgment of this Court declaring that the Constitution and laws of the State do not permit

the modification or repeal of Section 502 of the Racing Law and declaring Section 502-a of the Racing Law unconstitutional, invalid, and unenforceable.

WHEREFORE, Plaintiffs respectfully request that the Court issue a Judgement and Order:

- A. declaring Racing Law Section 502-a unconstitutional, invalid, and unenforceable; and
- B. awarding such other and further relief as this Court may deem just and proper.

Dated: Buffalo, New York
September 20, 2023

Lippes Mathias LLP

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EXHIBIT A

FOURTEENTH DAY – AUGUST 8, 1973

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**RESOLUTION NO. 171 GENESEE COUNTY NURSING HOME -
CREATION OF POSITION**

Legislator Hawley offered the following resolution:

WHEREAS, The Committee on Education and Health is convinced that the operations of the new Genesee County Nursing Home should be phased in as promptly and efficiently as possible, and

WHEREAS, It is the view of the Ways and Means Committee that effective familiarization of the new facilities be achieved while the building is in its final steps of construction, and

WHEREAS, The CSC has reviewed the duties of the positions in question, and find their classification under the suggested titles satisfactory. Now, therefore, Be it

RESOLVED, That the Genesee County Legislature hereby creates the following positions to provide direction and insure the orderly start up of this new facility:

Superintendent of Building Maintenance Salary \$11,500.00
Stenographer Salary \$5060.00 to \$6124.00

to be effective August 13, 1973, and Be it further

RESOLVED, That certified copies of this resolution be forwarded to the County Treasurer and the Civil Service Commission and appropriate departments effected.

Legislator Hume seconded the resolution which was adopted by unanimous vote.

**RESOLUTION NO. 172 AUTHORIZING THE COUNTY OF GENESEE
TO PARTICIPATE IN THE WESTERN
REGIONAL OFF-TRACK BETTING
CORPORATION**

Legislator DelPlato offered the following resolution:

WHEREAS, The New York State Legislature has adopted and Governor Rockefeller has approved legislation creating a public benefit corporation to be known as the Western Regional Off-Track Betting Corporation, which region includes Genesee County, for the conduct of off-track pari-mutuel betting on horse races (Chap. 346 of the Laws of 1973), and

WHEREAS, The legislation referred to above provides that subsequent to July 1, 1973, the effective date thereof, Genesee County under certain conditions may participate in the operation of the above mentioned corporation if it so elects by a resolution subject to a permissive referendum pursuant to the Municipal Home Rule Law, and

WHEREAS, It is deemed advisable by the Genesee County Legislature that it is in the best interest of the people of Genesee County for our County to participate and become a member of the Western Regional Off-Track Betting Corporation in order to permit our locality to derive income from the source of off-track betting, attempt to protect the vital racing industry already established within our County and for the purpose of fighting organized crime. Now, therefore, Be it

RESOLVED, That Genesee County is hereby authorized and empowered to participate in the Western Regional Off-Track Betting Corporation, a public benefit corporation established by the State of New York for the conduct of off-track mutuel betting on horse races, pursuant to Chapter 346 of the Laws of 1973 of the State of New York, and Be it further

RESOLVED, That this resolution is adopted subject to permissive referendum and shall become effective in accordance with Section 24 of the Municipal Home Rule Law of the State of New York.

Legislator Lapp seconded the resolution which was adopted by the following vote: Yeas, 8- Nays, 1 - Mr. Hawley.

Prior to the adoption of the above resolution, several of the Legislators expressed their views. It was brought out that passing of this resolution did not obligate the county in establishing off-track betting parlors or active participation in any plan of off-track betting. It would, however, entitle Genesee County to have a representative present at meetings held by the Western Regional Off-Track Betting Corporation. In this way Genesee County would be better able to determine whether or not it would be to its best advantage to actively participate in any form of off-track betting.