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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Monarch Content Management, LLC, a
Delaware limited liability company, Laurel
Racing Association, Inc. dba Laurel Park, a
Maryland corporation,

Plaintiffs,

v.

The Arizona Department of Gaming, a political
subdivision; Ted Vogt, Director, in his official
capacity; Rudy Casillas, Deputy Director and
Racing Division Director, in his official
capacity; Arizona Racing Commission, a
subordinate political entity; Rory S. Goreé,
Chairman, in his official capacity; Tom
Lawless, Vice Chairman, in his official
capacity; J.C. McClintock, Commissioner, in
his official capacity; Chuck Coolidge,
Commissioner, in his official capacity,

Defendants.

No. _____

COMPLAINT

(Declaratory Relief and Injunctive Relief)

For their complaint against Defendants, Plaintiffs allege as follows:

The Parties

1
2 1. Monarch Content Management, LLC (“Monarch”) is a Delaware limited liability
3 company which distributes horse racing content, via simulcast, protected by the Interstate Horse
4 Racing Act of 1978. 15 U.S.C. § 3001, *et seq.* (the “IHA”).

5 2. Laurel Racing Association, Inc. dba Laurel Park (“Laurel Park”) is a Maryland
6 corporation, which holds live racing events, which are broadcast via simulcast to out-of-state
7 racetracks and off-track-betting (“OTB”) sites around the country, and which are protected by
8 the provisions of the IHA.

9 3. The Arizona Department of Gaming (“Gaming Department”) is a state agency
10 charged with regulating gaming within the State of Arizona.

11 4. At all material times, Ted Vogt acted as the Director of the Gaming Department,
12 and is sued in his official capacity.

13 5. At all material times, Rudy Casillas acted as the Deputy Director of the Gaming
14 Department and Director of the Racing Division, and is sued in his official capacity.

15 6. The Arizona Racing Commission (“Racing Commission”) is a subordinate
16 political body, created by the Arizona Legislature, and charged with the implementation of rules
17 and regulations related to pari-mutuel racing in the state of Arizona.

18 7. The Racing Commission is composed of commissioners, a chairman, and a vice-
19 chairman.

20 8. Upon information and belief, at all material times hereto, Rory S. Goreé was the
21 Chairman of the Arizona Racing Commission, and is sued in his official capacity.

22 9. Upon information and belief, at all times material hereto, Tom Lawless served as
23 Vice Chairman of the Arizona Racing Commission, and is sued in his official capacity.

24 10. Upon information and belief, at all times material hereto, J.C. McClintock served
25 as a racing commissioner, and is sued in his official capacity.
26

General Allegations

19. “Pari-mutuel wagering” means a system of betting that provides for the distribution among the winning patrons of at least the total amount wagered less the amount withheld under state law.

20. While intrastate pari-mutuel racing activities are permissibly subject to laws passed by the State of Arizona and the authority of the Department of Gaming and Arizona Racing Commission, interstate racing activities are governed solely by the IHA.

21. The IHA prohibits any person from accepting “an interstate off-track wager” except “as provided in this chapter.”

22. In turn, an “interstate off-track wager” is defined as a “legal wager placed or accepted in one state with respect to the outcome of a horse race taking place in another state and includes pari-mutuel wagers.”

23. In enacting the IHA, the United States Congress expressed its clear and categorical intent that “in the limited area of interstate off-track wagering on horse races, there is a need for Federal action to ensure States will continue to cooperate with one another in the acceptance of legal interstate wagers.” See 15 U.S.C. § 3001 (a)(3).

24. Thus, the United States Congress expressed its intent to “regulate interstate commerce with respect to wagering on horse racing . . . to further the horseracing and legal off-track betting industries in the United States.”

25. In 2019, the Arizona Legislature passed Arizona House Bill 2547 (“HB 2547”). HB 2547 was signed into law by Governor Ducey on June 7, 2019, and will go into effect, unless enjoined by this Court, on August 27, 2019.

26. HB 2547 purports to amend A.R.S. § 5-112 by, among other things, adding subsection (U).

1 27. In particular, HB 2547 purports to amend A.R.S. § 5-112 in a way that regulates
2 any “simulcast” of horse racing that originates from a race track outside of the State of Arizona
3 and is shown within the State of Arizona.

4 28. HB 2547 now provides that such interstate simulcast “must be offered” to (a)
5 every “commercial live-racing permittee” within the state of Arizona and (b) every “additional
6 wagering facility” within the state of Arizona.

7 29. As amended by HB 2547, A.R.S. § 5-112(U) also purports to vest in the Racing
8 Commission the exclusive authority to determine the “charge” to be levied by any provider of
9 interstate simulcasts to any “commercial live racing permittee or additional wagering facility in
10 this state,” and prevents any offeror of interstate simulcasts from refusing to engage in business
11 with any live racing permittee or additional wagering facility in this state.

12 30. Monarch is the simulcast purchase and sales agent for a group of 13 racetracks
13 located throughout the United States, including: Santa Anita Park, Del Mar Thoroughbred Club,
14 Golden Gate Fields, Gulfstream Park, Tampa Bay Downs, Monmouth Park, Meadowlands,
15 Laurel Park, and Pimlico Race Course (the “Out-of-State Racetracks”).

16 31. All of the Out-of-State Racetracks are located outside of the territorial boundaries
17 of the state, and all simulcasts of any races from the Out-of-State Racetracks constitute
18 “interstate simulcasts” pursuant to the IHA.

19 32. Monarch, through its agreements and licenses with the Out-of-State Racetracks,
20 facilitates simulcast broadcasts of real-time footage of races taking place at the Out-of-State
21 Racetracks.

22 33. When Monarch enters into a contractual agreement with racetracks to provide
23 simulcasts, it does not merely provide the audio and visual components. Instead, Monarch
24 facilitates the provision of three services that are bundled together in one agreement (the
25 “Simulcast Wagering Contract”): a proprietary simulcast signal and decoding device to receive
26

1 that signal; access to betting pools for the races being broadcast; and access to real-time odds
2 and other betting information.

3 34. A simulcast contains a host of proprietary and expressive content. By way of
4 example, simulcasts typically include: pre-race visuals and analysis of the horses, jockeys,
5 owners, and trainers participating in a given race; the call of the race by an announcer; intra-race
6 graphics and commentary; post-race analysis and commentary; and betting tips and expert
7 “picks” for various races.

8 35. Monarch selects the races and racetracks that it ultimately bundles together and
9 markets as its simulcast package.

10 36. By virtue of its license with Monarch, Laurel Park retains ownership of the
11 content comprising the simulcast of live horseracing events occurring at its facility in Maryland.
12 Monarch enjoys the right to bundle, market, and sell the Laurel Park simulcast to other
13 racetracks and OTB networks, which right is exclusive, subject to certain limited exceptions not
14 relevant in this matter.

15 37. Monarch currently has a Simulcast Wagering Contract with TP Racing, LLLP,
16 d/b/a Turf Paradise (the “Turf Paradise Agreement”).

17 38. Turf Paradise offers pari-mutuel wagering in Arizona pursuant to a permit issued
18 by the Gaming Department.

19 39. Under the terms of the Turf Paradise Agreement, Monarch provides the simulcast
20 from Out-of-State Racetracks, including Laurel Park, as well as access to pari-mutuel pools and
21 real-time betting odds, to Turf Paradise’s racetrack and Turf Paradise’s network of OTB sites.

22 40. The Turf Paradise Agreement was the product of free negotiation, and the result
23 of market forces.

24 41. In early 2018, a new entrant into the Arizona live racing business, Arizona
25 Downs, sought to enter into a contract with Monarch for the provision of interstate simulcasts to
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1 both Arizona Downs racetrack and to certain OTB sites affiliated with Arizona Downs located
2 within the state of Arizona.

3 42. Monarch entered into a contract with Arizona Downs to provide the simulcast
4 from the Out-of-State Racetracks to Arizona Downs' racetrack facility.

5 43. During its negotiations with Arizona Downs, however, Monarch concluded that
6 the location and character of the Arizona Downs' OTB sites would be deleterious to the
7 business interest of Monarch, Laurel Park, and the other Out-of-State-Racetracks, as the
8 location of Arizona Downs' OTB sites would create dilution of the wagering product, and
9 depress the overall consumption of content.

10 44. Thus, for that and other business reasons, Monarch declined to enter into a
11 contract with Arizona Downs for the provision of interstate simulcasts to Arizona Downs' OTB
12 sites for the purpose of allowing pari-mutuel wagering.

13 45. Laurel Park agrees with Monarch's decision, and does not want its races
14 broadcast at, or to accept pari-mutuel wagers from, Arizona Downs' OTB sites.

15 46. That decision was protected by § 3004(a)(1) of the IHA.

16 47. Upon information and belief, Arizona Downs entered into one or more contracts
17 with one or more other providers of interstate simulcast racing, and is currently engaged in the
18 business of broadcasting such simulcasts at its racetrack and its existing OTB network.

19 48. Therefore, no legitimate or other interest is furthered by compelling Monarch to
20 provide simulcasts to Arizona Downs' OTB sites.

21 49. If A.R.S. § 5-111(U), as amended by HB 2547, is enforced, Monarch and Laurel
22 Park will suffer real, concrete, particularized, and significant harms, including, but not limited
23 to, a loss of their ability to withhold consent under the IHA, a loss of their ability to negotiate
24 contracts, interference with the existing contract with Turf Paradise, a compulsion of expressive
25 activity, a significant diminution in the value of their goods and services, and a concomitant loss
26 in goodwill.

1 50. Moreover, A.R.S. § 5-111(U), as amended by HB 2547, subjects Monarch and
2 Laurel Park to a deprivation of their rights protected by the First Amendment to the United
3 States Constitution and Article 2, Section 6 of the Arizona Constitution. Monarch and Laurel
4 Park are not required to suffer an actual loss of such protected rights prior to seeking redress.

5 51. Monarch and Laurel Park have no adequate legal remedy, and the
6 aforementioned harm can only be ameliorated through an injunction barring the enforcement of
7 A.R.S. § 5-112(U) as amended by HB 2547.

8 52. Although it is clear that Monarch and Laurel Park's constitutional and federally
9 protected rights would be violated through enforcement of A.R.S. § 5-112(U) as amended by
10 HB 2547, other provisions of that statute are impermissibly vague.

11 53. A.R.S. § 5-112(U), as amended by HB 2547, not only compels Monarch and
12 Laurel Park to make their products available to individuals and entities not of their choosing,
13 but vests in the Racing Commission the sole discretion to determine if such offers are "anti-
14 competitive or deceptive," or whether any agreement reached through those offers are
15 "reasonable."

16 54. However, the Arizona Legislature has not defined what constitutes a "reasonable"
17 agreement, does not provide any guidance on what constitutes a "reasonable" agreement, and
18 provides virtually no guidance regarding what comprises an "anti-competitive or deceptive"
19 practice.

20 55. Although both the ambit and enforcement mechanisms of HB 2547 are unclear,
21 Monarch and Laurel Park are subjected to potential criminal felony penalties if they fail to
22 comply with the obligation to enter into those compelled offers and agreements with unknown
23 individuals or parties.

24 56. Moreover, the Arizona Legislature has not provided a mechanism (and certainly
25 has not prescribed the procedure) for any appeal of the Racing Commission's necessarily *ad*
26 *hoc* determination that an agreement is not "reasonable" or that it has engaged in a prohibited

1 activity. Monarch and Laurel Park do not know if they can appeal such decision, how they can
2 appeal such decision, when they can appeal such decision, or who will hear such an appeal.

3 57. A.R.S. § 5-112(U), as amended by HB 2547, provides no explicit or discernable
4 standards to the Racing Commission as to how it will determine whether an agreement
5 compelled by this statute is “reasonable.” Instead, Monarch and Laurel Park are subjected to a
6 statute that may be arbitrarily and discriminatorily enforced.

7 **COUNT ONE**

8 **DECLARATORY RELIEF**

9 58. Monarch and Laurel Park incorporate the allegations of the preceding paragraphs
10 as if set forth herein.

11 59. A genuine and justiciable controversy exists concerning the interpretation,
12 constitutionality, and enforceability of A.R.S. § 5-112, as amended by HB 2547.

13 60. Monarch and Laurel Park have certain rights guaranteed by the constitutions of
14 the United States and the state of Arizona that would be impugned by the enforcement of
15 A.R.S. § 5-112, as amended by HB 2547.

16 61. In addition, Monarch and Laurel Park have rights pursuant to the IHA that would
17 be interfered with by the enforcement of A.R.S. § 5-112, as amended by HB 2547.

18 62. In particular, under the IHA, Laurel Park has the right to withhold consent for any
19 interstate off-track wagers to be placed on its races, as does Monarch on behalf of any of the
20 Out-of-State-Racetracks. By mandating that simulcasts be sent to all racetracks and OTB
21 locations within the state of Arizona regardless of consent, that consent provision is vitiated.

22 63. A.R.S. § 5-112(U), as amended by HB 2547, constitutes a substantial impairment
23 of Monarch’s ability to fulfill its contract with Turf Paradise and to maintain its ability to freely
24 negotiate and enter into contracts.

1 64. Similarly, A.R.S. § 5-112(U), as amended by HB 2547, improperly interferes
2 with the existing contractual relationship between Monarch and Laurel Park by interfering with
3 the business judgment entrusted to Monarch under that agreement.

4 65. To be sure, A.R.S. § 5-112 (U) substantially interferes with Monarch's reasonable
5 expectations and prevents Monarch from safeguarding its right to contract.

6 66. Moreover, HB 2547 is neither appropriate nor reasonable, and does not advance a
7 significant legitimate public purpose. Instead, it seeks to protect Arizona Downs.

8 67. For these reasons, A.R.S. § 5-112(U), as amended by HB 2547, violates Article I,
9 § 10 of the United States Constitution and Article 2, Section 25 of the Arizona Constitution.

10 68. Moreover, A.R.S. § 5-112(U), as amended by HB 2547, improperly imposes a
11 price regulation on commerce occurring wholly outside of Arizona, and constitutes an invalid
12 extraterritorial regulation of interstate commerce.

13 69. Further, A.R.S. § 5-112(U), as amended by HB 2547 constitutes a substantial
14 burden on interstate commerce because it places substantial burdens on out of state commerce
15 and serves no legitimate local interest.

16 70. For these reasons, A.R.S. § 5-112(U), as amended by HB 2547, violates the
17 Dormant Commerce Clause.

18 71. A.R.S. § 5-112(U), as amended by HB 2547, compels Monarch and Laurel Park
19 to provide expressive activity in fora in which they otherwise would choose not to speak, and to
20 provide their expressive content to individuals and entities from whom they would otherwise
21 choose to withhold their expressive content.

22 72. For this reason, A.R.S. § 5-112(U), as amended by HB 2547, compels speech in
23 violation of the First Amendment to the United States Constitution and Article 2, Section 6 of
24 the Arizona Constitution.

1 73. A.R.S. § 5-112(U), as amended by HB 2547, impermissibly conflicts with
2 Sections 3001(a)(3) and 3004 of the IHA, because it seeks to regulate in an area specifically
3 reserved by the United States Congress for federal regulation.

4 74. A.R.S. § 5-112(U), as amended by HB 2547, also acts to deprive Monarch and
5 Laurel Park of rights they possess under Section 3004 of the IHA.

6 75. For these reasons, A.R.S. § 5-112(U), as amended by HB 2547, is pre-empted by
7 federal law.

8 76. A.R.S. § 5-112(U), as amended by HB 2547, is void, because it is impermissibly
9 vague.

10 **COUNT TWO**

11 **INJUNCTIVE RELIEF**

12 77. Monarch and Laurel Park incorporate by reference the foregoing paragraphs as if
13 incorporated herein.

14 78. Monarch and Laurel Park have no adequate, just, or speedy remedy at law.

15 79. The enforcement of A.R.S. § 5-112(U), as amended by HB 2547, against
16 Monarch will cause Monarch significant, immediate, and irreparable injury.

17 80. The enforcement of A.R.S. § 5-112(U), as amended by HB 2547 will cause
18 Laurel Park significant, immediate, and irreparable injury.

19 81. Both public policy and equities tip sharply in favor of Monarch and Laurel Park
20 and against the enforceability of A.R.S. § 5-112(U), as amended by HB 2547.

21 82. For these reasons, the Court should preliminarily and permanently enjoin
22 Defendants from enforcing A.R.S. § 5-112(U), as amended by HB 2547, against the Plaintiffs
23 in this matter.

24 Wherefore, Monarch and Laurel Park request that the Court enter judgment in their favor
25 and against Defendants as follows:
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