UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

Case No.: 4:19-cv-570-MW-CAS

SUPPORT WORKING ANIMALS, INC., et al.,

Plaintiffs,

RON DESANTIS, et al.,

Defendants.

_____/

MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 to enjoin the Defendants from enforcing the provisions of Amendment 13, which amount to an unconstitutional violation of fundamental rights in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution. Plaintiffs hereby submit their Memorandum in Opposition to Defendants' Consolidated Motion to Dismiss Plaintiffs' Complaint and state that Defendants' Motion should be denied because Plaintiffs Complaint not only meets but exceeds the standards governing the form of a complaint contemplated by the Federal Rules of Civil Procedure.

Defendants have moved to dismiss Plaintiffs' claims asserting three arguments: 1) that Plaintiffs' claims are barred by the Eleventh Amendment, 2) that

Plaintiffs lack of standing; and 3) that Plaintiffs have failed to state a claim upon which relief may be granted.

PRELIMINARY STATEMENT

Plaintiffs are corporate entities and individuals who have worked in the greyhound racing industry, some of whom are third and fourth generation family businesses, who will be devastated in just twelve months by the enactment of Amendment 13 prohibiting greyhound racing. Plaintiffs seek declaratory and injunctive relief in this Court to strike down Amendment 13 as unconstitutional deprivation of Plaintiffs' fundamental rights.

The Declaratory Judgment Act offers a unique mechanism by which Plaintiffs may seek to remedy violations of statutory or constitutional provisions. 28 USC § 22. As a general matter, the Declaratory Judgment Act was intended to aid citizens by eliminating intolerable uncertainties in their legal and business relations and afford one threatened with liability an early adjudication without waiting until they are put in an untenable position of choosing between intentionally flouting the law and or forgoing what he believes to be constitutionally protected activity in order to avoid becoming enmeshed in a civil or criminal proceeding.

Plaintiffs in this case assert that this purported constitutional amendment is unconstitutional and violative of their collective fundamental rights and seek pre-

enforcement review and prospective relief as contemplated by the principles set forth in *Ex parte Young* which permits suits exactly like this.

STANDARD OF REVIEW FOR MOTION TO DISMISS

Courts view Rule 12(b)(6) motions with disfavor. *Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997) ("We hasten to add that [a 12(b)(6) motion] is viewed with disfavor and rarely granted."). When evaluating a motion to dismiss under Rule 12(b)(6), the question is whether the complaint "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). This does not, of course, force a plaintiff to provide "detailed factual allegations" to survive a motion to dismiss under Rule 12(b)(6). *Twombly*, 550 U.S. at 555. Rather, the "[f]actual allegations [in the complaint] must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Id.* (citations omitted).

At bottom, "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citation omitted). *Worthy v. Phenix City*, 930 F.3d 1206, 1217 (11th Cir. 2019).

[A complaint] should not be dismissed unless it appears "beyond doubt that the plaintiff[s] can prove no set of facts in support of [their] claim that would entitle [them] to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 101-02, 2 L. Ed. 2d 80 (1957), *Luckey v. Harris*, 860 F.2d 1012, 1016 (11th Cir. 1988).

The Federal Rules embody "notice pleading" and require only a concise statement of the claim, rather than evidentiary facts. Plaintiffs' set out a concise statement of their claim that Amendment 13 deprives them of their fundamental rights in their property under an impermissible exercise of police power. Plaintiffs Complaint more than meets the requirement that it be "short and plain." The Complaint clearly puts Defendants on fair notice of the charges against them.

BACKGROUND

The proposal to abolish greyhound racing did not originate in the Florida Legislature. Instead proponents of the proposal sought to use the Constitution Revision Commission [hereinafter referred to as "**the CRC**"].

On Monday, December 9, 2019, the House State Affairs Committee unanimously approved a resolution that seeks to eliminate the state's CRC. Ryan Nicol, "House panel unanimously approves measure to repeal Constitution Revision Commission," FLAPOL, December 9, 2019.

https://floridapolitics.com/archives/312979-house-panel-repeal-constitution-revision-commission

Based on the current political climate in Florida's Legislative body, the CRC will most likely be abolished. "The left and the right united . . . to back a proposal to abolish Florida's Constitutional Revision Commission." Senator Jeff Brandes, R-St. Petersburg is quoted as saying, . . . "We were able to bring the Baptists and bootleggers together on this point." James Call, "Bipartisan group of Florida senators vote to abolish Constitution Revision Commission 'star chamber,'"

Tallahassee Democrat, September 27, 2019.

https://www.tallahassee.com/story/news/politics/2019/09/17/bipartisan-group-florida-senators-vote-abolish-constitution-revision-commission-star chamber/2350212001/

Both parties claim that the CRC has "drifted from its original purpose to address omissions and correct unintended consequences of the state constitution written in 1968." "Unelected individuals were proposing things and putting them on [sic] the constitution that were not vetted through a typical process, Brandes said." Brandes went on to say, "One example . . . was Amendment 13, which banned greyhound racing. It was introduced at the CRC's *last* meeting and is now part of the constitution." *Id.*

In 2018, the CRC proposed amendments that "could and should have been done through the Legislature" said Brandes. Senator Dennis Baxley, R-Ocala said

that the CRC "circumvents the legislative process of electing people to come together and work through these discussions and debate each other and resolve things. It's not often I get to vote with my friends on the left, but I do because I think [the CRC] is something we don't need." *Id.*

ARGUMENT AND MEMORANDUM OF LAW

I) This Case is Not Barred by the Eleventh Amendment

Defendants principally argue that plaintiffs lack standing based on their immunity arguments. But binding precedent compels the rejection of their assertion. The doctrine of *Ex parte Young* forecloses State Defendants' assertion of Eleventh Amendment immunity. Under *Ex parte Young*, 209 U.S. 123 (1908), "a suit alleging a violation of the federal constitution against a state official in his official capacity for injunctive relief on a prospective basis is not a suit against the state, and, accordingly, does not violate the Eleventh Amendment." *Grizzle v. Kemp*, 634 F.3d 1314, 1319 (11th Cir. 2011). In *Lewis v. Governor of Ala.*, *914 F.3d 1291, 1292 (11th Cir. 2019)* this Court held that *Ex parte Young* allowed plaintiffs contesting the constitutionality of a state minimum-wage statute to sue the state attorney general for "an injunction declaring the [statute] unconstitutional and prohibiting the attorney general from enforcing it." *Id.* at 1291-92, later vacated rehearing granted. And in *Summit Med. Assocs., P.C. v. Pryor, 180 F.3d 1326, 1329 (11th Cir. 1999),*

this Court applied *Ex parte Young* to a suit against a governor, state attorney general, and district attorney in their official capacities because the plaintiffs "unquestionably [sought] prospective relief—a declaratory judgment that [state] partial-birth and post-viability abortion statutes are unconstitutional." *Id.* at 1339.

Here, the Plaintiffs have brought suit alleging that Amendment 13 is unconstitutional and is seeking declaratory relief prospectively. Claimants are not seeking compensatory relief but only an injunction against Defendants from enforcing the provisions of Amendment 13 which violate Plaintiffs' constitutional rights.

Sovereign immunity will not bar a claim against the State based on violations of the state or federal constitution. *Dep't of Revenue v. Kuhnlein*, 646 So. 2d 717, 721 (Fla. 1994) ("Sovereign immunity does not exempt the State from a challenge based on violation of the federal or state constitutions, because any other rule self-evidently would make constitutional law subservient to the State's will."). *Fla. Fish & Wildlife Conservation Comm'm v. Daws*, 256 So. 3d 907, 912 (Fla. Dist. Ct. App. 2018).

Plaintiffs in this case are seeking prospective relief as contemplated by *Ex parte Young*. Plaintiffs do not have the luxury of waiting until they have been faced with criminal and/or civil liabilities. Plaintiffs seek a declaration by this Court that Amendment 13 is an unconstitutional deprivation of Plaintiffs' fundamental rights

to their property, an unconstitutional impairment of their contract rights, and a discriminatory deprivation of rights violative of the Equal Protection Clause.

II. DEFENDANTS ARE BEING SUED IN THEIR OFFICIAL CAPACITY AND ARE THE PROPER FLORIDA PARTIES VESTED WITH THE DUTY TO ENACT THESE LAWS BUT ALSO VESTED WITH REDRESSABILITY

A. Governor DeSantis is a Proper Party

Governor DeSantis is the head of the executive branch and supreme executive power of the State of Florida is vested in him. He has allegedly used this power to fight against Amendment 4, another amendment placed on the ballot by the CRC. Amendment 4 purports to restore voting rights of Floridians with felony convictions after they complete all terms of their sentence. The ACLU claims that Governor DeSantis has affirmatively fought against the full enactment of Amendment 4. In June 28, 2019, Gov. Ron DeSantis signed SB7066 (requiring conditions precedent prior to restoration of voting rights) into law calling Amendment 4 a "mistake" in his signing statement. Ari Berman, "7 Months After Florida Approved an Expansion of Voting Rights, the Governor Just Gutted It," Mother Jones, June 28, 2019.

https://www.motherjones.com/politics/2019/06/7-months-after-florida-approved-an-expansion-of-voting-rights-the-governor-just-gutted-it/

Governor DeSantis has clearly demonstrated his vested power to intervene, revise and delay the implementation of this particular amendment *a fortiori* that he

has the power to enforce and/or review the constitutionality of an amendment passed under the same constitutional amendment mechanism. In addition it is the Governor's duty to take care that the laws of the state of Florida are faithfully followed and executed.

B. Attorney General Ashley Moody is a Proper Party

Ashley Moody, the Florida Attorney General, has the general right and authority to defend the constitutionality of state laws. The constitutionality of an amendment to Florida's constitution that was enacted without the usual safeguards of being vetted in the Legislature is being challenged claiming that it violates both the Florida and the United States Constitutions. The Florida State Attorney General is a required member of the CRC which placed this amendment on the 2018 ballot. Since the amendment was never vetted for its constitutionality through the CRC, it is the duty of the Florida Attorney General, as the head of the Florida Department of Legal Affairs to "defend the state in civil litigation cases" and "to defend the constitutionality of Florida statutes."

C. Secretary of State Laurel Lee is a Proper Party

Laurel Lee, the Secretary of State of the State of Florida is the head of the Florida Department of State who oversees the Division of Corporations. As head of the Department of State, her office is responsible for the issuance of business

licenses for pari-mutuels under the Department of Business and Professional Regulation. Florida businesses are required to carry on a "legal" business. After the enactment of Amendment 13, Plaintiffs' businesses will be deemed "illegal." Therefore, the Florida Department of State will be enforcing a constitutional amendment that lacks a legitimate state purpose thereby permitting them to illegally deprive Plaintiffs of the right to use their property (greyhound racing dogs) in their business ventures.

DEFENDANTS' MOTION TO DISMISS IMPERMISSIBLY RAISES FACTUAL ISSUES OUTSIDE THE SCOPE OF PLAINTIFFS' COMPLAINT

Defendant has made no attempt to challenge the legal sufficiency of allegations in Plaintiffs' Complaint, as would be proper in a motion to dismiss, and has instead directly addressed the merits of the case by raising disputed issues of facts. These asserted facts are well outside the four corners of Plaintiffs' Complaint, and were raised by Defendants solely to avoid answering the complaint. See *Milburn v. United States*, 734 F.2d 762, 765 (11th Cir. 1984) ("A motion to dismiss for failure to state a claim merely tests the sufficiency of the complaint; it does not decide the merits of the case.")

PLAINTIFFS' TAKINGS CLAIMS: SUBSTANTIVE DUE PROCESS AND EQUAL PROTECTION

The Eleventh Circuit recognizes that a plaintiff presenting a takings claim based on a regulation which affects private property that is arbitrary and capricious

and bears no substantial relation to the public good, is therefore an invalid exercise of the police power. *Eide v. Sarasota County*, 908 F.2d 716, 720 (11th Cir. 1990), *cert. denied*, 498 U.S. 1120, 111 S. Ct. 1073, 112 L. Ed. 2d 1179 (1991). This type of takings claim is identified by the Eleventh Circuit as "an arbitrary and capricious due process claim." *Id*. at 722. Many other courts also refer to this third type of claim as a substantive due process claim. *Id*. at 722, n.9. Additionally, a plaintiff may claim an equal protection violation and attack a regulation on its face or as applied to the property. *Id*. at 722.

If the plaintiff claims that the regulation denies equal protection against him or her because . . . the regulation involves a fundamental right, then the regulation is subject to strict scrutiny. *See San Antonio Indep. School Dist. v. Rodriguez*, 411 U.S. 1, 16-17, 93 S. Ct. 1278, 1287-88, 36 L. Ed. 2d 16 (1973) *Eide* at 722. 1990).

PLAINTIFFS HAVE MADE A SATISFACTORY STATEMENT DEMONSTRATING THEIR CLAIMS

Discovery is Required for a Proper Analysis of Plaintiffs' Takings Claim

The state's motion to dismiss impermissibly attempts to decide the merits of the takings claim. A complaint need only state a short plain statement and on the issue of general principles governing the Takings Clause. In *Penn Cent. Transp. Co. v. New York City, 438 U.S. 104, 98 S. Ct. 2646 (1978)* the Court noted that no "set formula" existed to determine, in all cases, whether compensation is constitutionally due for a government restriction of property. Ordinarily, the Court must engage in

"essentially ad hoc, factual inquiries." *Id*., at 124. But the inquiry is not standardless. The economic impact of the regulation, especially the degree of interference with investment-backed expectations, is of particular significance. "So, too, is the character of the governmental action. *Loretto v. Teleprompter Manhattan Catv Corp.*, 458 U.S. 419, 426, 102 S. Ct. 3164, 3171 (1982).

SUBSTANTIVE DUE PROCESS

The Fifth Amendment to the United States Constitution provides that private property shall not "be taken for public use without just compensation." The courts have interpreted this guaranty to apply not only to real property but to personal property as well. See, *Andrus v. Allard*, 444 U.S. 51, 100 S. Ct. 318, 62 L. Ed. 2d 210 (1979) (addressing the issue of whether the Eagle Protection Act and the Migratory Bird Treaty Act amounted to a compensable taking of the personal property of appellees who were engaged in the trade of Native American artifacts partially composed of bird feathers).

The Supreme Court set forth the following three factors to be considered in determining whether there has been a compensable taking: 1) "[t]he economic impact of the regulation on the claimant," (2) "the character of the governmental action," and (3) "the extent to which the regulation has interfered with distinct investment backed expectations." *Penn Central,* at *124*.

Plaintiffs assert their property rights in their greyhound racing dogs along with the personal property functionally integrated in nature to the racing activity sought to be prohibited by Amendment 13. In determining what property rights exist and therefore are subject to taking under U.S. Const. amend. V. federal courts look to local state laws. *Richmond Elks Hall Assoc. v. Richmond Redevelopment Agency*, 561 F.2d 1327, 1330 (9th Cir. 1977).

While most people would like to believe that dogs are family members, under Florida law, they are regarded merely as personal property. See *Levine v. Knowles*, 197 So. 2d 329, 330-31 (Fla. 3d DCA 1997) (dogs are considered property, taxable as other personal property); *State v. Milewski,* 194 So. 3d 376, 378 (Fla. 3d DCA 2016) (Florida law consider animals to be personal property.).

In *Basford*, a Florida case which raised almost identical issues to the case at bar, the court held that in regard to takings, "property" also includes the personal property "functionally integrated in nature" to the "prohibited activity" *State v. Basford*, 119 So. 3d 478, 481 (Fla. Dist. Ct. App. 2013).

In that case a 2002 constitutional amendment was placed on the ballot by citizen initiative entitled "The Pregnant Pig Amendment" which was aimed at preventing cruelty to pigs by limiting their confinement during pregnancy. Basford, a pig farmer, argued that the amendment deprived him of all economically viable

and reasonable use of his business for a public purpose. Although noting that the Amendment restricted only the use of gestation crates, the trial court found that the Amendment resulted in the taking of all of the improvements due to their "functionally integrated nature." *Id*. at 481.

The greyhound racing dogs are personal property belonging to the Plaintiffs. Amendment 13 bans greyhound racing and deprives the Plaintiffs of their fundamental right to use their property for their designated purpose as greyhound racing dogs. The Amendment deprives Plaintiffs of all economically viable use of the greyhound racing dogs and all property functionally integrated in the use thereof.

Property rights in a physical thing have been described as the rights "to possess, use and dispose of it." *United States* v. *General Motors Corp*., 323 U.S. 373, 378 (1945); *Loretto* at 435. Even though the state action does not physical take the property from Plaintiffs, Amendment 13 bans the primary beneficial use of Plaintiffs' property.

To constitute a taking under the Fifth Amendment it is not necessary that property be absolutely 'taken' in the narrow sense of that word to come within the protection of this constitutional provision; it is sufficient if the action by the government involves a direct interference with or disturbance of property rights. *Richmond Elks* at 1330. Here, the government action is not just an interference, but

a complete ban on the use of the greyhound racing dog for its designated purpose. Amendment 13 prohibits dog racing which has been the primary use of the greyhound dog as property in the industry of greyhound racing, an industry which has been on-going in this state for almost one hundred years. The dogs are bred from bloodlines dating back hundreds of years. The value of the dog is based on its bloodlines and its racing history. People in the industry would purchase greyhound racing dogs and pay stud fees in the hopes of breeding a racing superstar. Amendment 13 deprives all owners of racing dogs of the value of their property because their designated use will be considered illegal.

A discreet asset rendered useless can be compensated. *State Road Dep't v. Tharp,* 1 So. 2d 868 (Fla. 1941) and just compensation is measured "by reference to the uses for which the property is suitable, having regard to the existing business." *United States v. Miller*, 317 U.S. 369, 374 (1943). Even though the state action has not literally confiscated the greyhound racing dogs, their value has been rendered useless by the amendment as they are prohibited from racing. Indeed the value of the greyhound racing dog comes from the success of its bloodlines in racing.

EQUAL PROTECTION

"Pari-mutuel pools" is a term applied to horse racing, jai alai, and dog racing . . . in which each bettor lays a fixed sum on the contestant he selects, and those who

choose the winner, divide the entire stake, less percentage of the person who furnishes the pool tickets, literally mutual bets. *Weiss v. Schachter*, 275 Ill.App. 26 (1934).

The makers of our 1968 Constitution recognized horse racing as a . . . "pari-mutuel pool" but also intended to include . . . dog racing, jai alai and bingo. *Greater Loretta Improv. Ass'n v. State,* 234 So. 2d 665, 671-72 (Fla. 1970).

Pari-mutuels, horse racing, dog racing and harness racing are governed under the same Wagering Act, Fla. Stat. Chapter 550 *et seq.*, yet only the dog racing provision is now prohibited. While a racing permit or license granted under the statute is but a mere license granted or withheld at the option of the state acting under its police powers, the right to profitably enjoy the benefits of a license after it has already granted, without undue prejudice to the licensee, or undue discrimination in favor of other licensees similarly situated is implied. *State of Fla., ex Rel., v. Stein*, 130 Fla. 517, 522 (Fla. 1938).

Here, there is no doubt that Amendment 13 openly discriminates only on greyhound racing without providing any justifiable basis for the differing treatment. When there is no reasonably identifiable rational relationship between the demands of the public welfare and the restraint upon private business, the latter will not be permitted to stand. *Eskind v. Vero Beach, 159 So. 2d 209, 212 (Fla. 1963).*

If Amendment 13 is adopted, therefore, the only activities which will change in a material way are dog racing in Florida and wagering thereon, which will cease. Horse racing, jai alai, and other permitted gaming activities will continue on January 1, 2021, just as they did on December 31, 2020. *Dep't of State v. Fla. Greyhound Ass'n,* 253 So. 3d 513, 524 (Fla. 2018).

Here, the purported state interest is protecting the Plaintiffs' own property (greyhounds) from being harmed. There is no particular public benefit, yet the restrictive encroachment on only greyhound racing dogs, not horse racing, provides for a discriminatory prohibition.

Additionally, to be valid, [the police power] must apply to the general public as distinguished from a particular group or class. *United Gas Pipe Line Co. v. Bevis*, 336 So. 2d 560, 564 (Fla. 1976). Here it is undisputed that special interest groups, including but not limited to Grey2K, the major proponent of Amendment 13 was financially benefitted while there is no benefit whatsoever to the public welfare, in fact, there is only detriment because Amendment 13's provisions will cause many tax-paying Floridian's, similarly situated to the Plaintiffs to either be a ward of the state, or move out of the State of Florida.

According to one website, Grey2K is special interest group that claims it is a charity. However, there is no listing for the organization on Charity Navigator because it is not a 501c3 and donations to Grey2K are not tax-deductible. From 2009 to 2014 Grey2K raised over $2,000,000 from donations and grants. Despite their donation page that reads, "Give Now to Save Greyhounds" during that 5-year period only 1.4% of donor funds actually went to Greyhound adoption efforts. "Grey2K USA Worldwide," Protect the Harvest.

https://protectttheharvest.com/what-you-need-to-know/overview-of-animal-rights-organizations/grey2k/

In *United Gas*, the Act has potential benefit for a *limited class* of natural gas users in Florida. The public welfare for which the police power of the State has been invoked must be considered against the rights being affected by this considerable power. *Bevis* at 564 (Fla. 1976) (The Court held a Florida statute constitutionally defective because although the legislature could regulate natural gas distributors as an exercise of the police power, it cannot violate due process requirements.)

Here, the state has indicated no legitimate benefit to the welfare of Florida citizens by depriving the Plaintiffs of the use of their own "property" (greyhounds) for the purpose of "protecting the property" while leaving status quo the other industries similarly situated, *i.e.*, horse racing and harness racing. Amendment 13 is

improperly discriminates against certain individuals in a group unfairly with no legitimate purpose and it must be struck down as constitutionally defective.

IMPAIRMENT OF CONTRACTS

The Contract Clause's prohibition of any state law impairing the obligation of contracts must be accommodated to the State's inherent police power to safeguard the vital interests of its people. The threshold inquiry is "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship." *Allied Structural Steel Co*. v. *Spannaus*, 438 U.S. 234, 244. Here, Amendment 13 not only substantially impairs, but decimates the greyhound racing industry by banning it altogether.

If a substantial impairment is found, the State, in justification, must have a *significant and legitimate public purpose* behind the regulation. Once such a purpose has been identified, the adjustment of the contracting parties' rights and responsibilities must be based upon reasonable conditions and must be of a character appropriate to the public purpose justifying the legislation's adoption. Pp. 410-413. *Energy Reserves Grp. v. Kan. Power & Light Co.*, 459 U.S. 400, 403, 103 S. Ct. 697, 700 (1983).

The state's purported significant and legitimate interest is the protection of the Plaintiffs' property from harm. In other words, the state is depriving Plaintiffs' of

the use of their property, essentially eradicating a one-hundred-year-old industry for the purpose of protecting the property used in the industry.

Contract rights are also a form of property and as such may be taken for a public purpose provided that just compensation is paid. *Contributors to Pennsylvania Hospital v. Philadelphia*, 245 U.S. 20 (1917); see *El Paso v. Simmons*, 379 U.S. 497, 533-534 (1965). Amendment 13 will prohibit the existing contracts which Plaintiffs have in place and will render their activity without value. Many of the Plaintiffs have contracts that are only useful in the greyhound racing industry; without which, there will be no economical use for their businesses whatsoever.

The Eleventh Circuit has made clear that "Total destruction of contractual expectations is not necessary for a finding of substantial impairment." *Id.* at 411, 103 S. Ct. at 704; *Vesta Fire Ins. Corp. v. Florida*, 141 F.3d 1427, 1433 (11th Cir. 1998). But here, Plaintiffs businesses will be completely destroyed as their businesses depend on the greyhounds being allowed to race.

The Supreme Court held that “the severity of the impairment [of contracts] is said to increase the level of scrutiny to which the legislation will be subjected. In the case at bar, Plaintiffs claim that Amendment 13 will completely devastate and destroy all investment backed expectations in their businesses as they all rely on greyhound racing dogs to be allowed to race in order to run their businesses.

The requirement of a significant legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests. *Energy Reserves* at 412. Here, the constitutional amendment was a benefit only to special interest groups, including, but not limited to Grey2K, which had pecuniary interests in getting the amendment on the ballot.

This significant impairment of Plaintiffs' contract rights violates the Contracts Clause because it is based on an impermissible use of police power and the substantial benefit of the amendment was for a special interest groups fundraising activities.

AMENDMENT 13 IS BASED ON
AN IMPERMISSIBLE USE OF POLICE POWER

Those limits on the state's otherwise valid exercise of its police power are determined by a three-part test that asks: (1) whether the contractual impairment is in fact substantial; if so, (2) whether the law serves a significant public purpose, such as remedying a general social or economic problem; and, if such a public purpose is demonstrated, (3) whether the means chosen to accomplish this purpose are reasonable and appropriate. *See Energy Reserves* at 411-13; *Allied Structural Steel* at 242-44; *United States Trust Co. of New York v. New Jersey*, 431 U.S. 1, 22-23, 52 L. Ed. 2d 92, 97 S. Ct. 1505 (1977); *Sanitation & Recycling Indus. v. City of N.Y.*, 107 F.3d 985, 993 (2d Cir. 1997).

Amendment 13's provisions fail all three prongs of the Supreme Court's three-part test of impairment to contracts. The police power, is an exercise of the sovereign right of the Government to protect the lives, health, morals, comfort and general welfare of the people, and is paramount to any rights under contracts between individuals." *Manigault v. Springs, 199 U.S. 473, 480*.

The language of Amendment 13 clearly states its purpose in the first four words of the first sentence, "The humane treatment of animals." Article 10, §32 of the Florida Constitution. The State's Motion misstates the purpose of Amendment 13 by claiming that the alleged purpose is to prohibit *gambling* on dog racing. Contrary to the State's assertion, the purpose of Amendment 13 was *not* to prohibit wagering on live greyhound racing, because placing bets while in the state of Florida on live dog races occurring outside the state of Florida will still be legal. The purpose was to abolish greyhound racing.

The intent of the amendment can be clearly gleaned by the CRC Commissioner and proponent of Amendment 13, Tom Lee, who is quoted as saying that greyhound racing is 'cruel and inhumane." Jim Rosica, "Tom Lee files greyhound racing ban in Florida, FLAPL, November 1, 2017.

https://floridapolitics.com/archives/248460-tom-lee-files-dog-racing-ban

Florida State Attorney General Pam Bondi, explained her support for the passage of Amendment 13 by stating that she had a "heartfelt commitment to . . . treating our greyhounds with mercy." Jim Reed, "Pam Bondi and Lara Trump explain their support for Amendment 13," Tampa Bay Times, November 5, 2018.

https://www.tampabay.com/opinion/columns/column-bondi-and-lara-trump-explain-their-support-for-amendment-13-20181019/

The Florida Supreme Court gleaned that "according to the plain text of the ballot language, is [about] dog racing and *not* wagering. *Dep't of State v. Fla. Greyhound Ass'n,* at 525.

The purported intent of this Amendment is clear: to protect greyhound racing dogs. In other words, the state is intending to use their purported police power to protect Plaintiffs' own personal property from being harmed while depriving the Plaintiffs of their livelihoods. This cannot be said to be a legitimate exercise of police power to protect lives, health, morals, comfort and general welfare of the people. Protecting property, while destroying the businesses of thousands of individuals and rendering other dependent property valueless is an illegitimate use of police power.

Amendment 13 deprives Plaintiffs from making a living in an industry in which Florida has regarded as legitimate and important for almost one hundred

years. "The State of Florida has a legitimate pecuniary interest in racing because of the substantial revenue it receives from pari-mutuel betting." *Hialeah Race Course, Inc. v. Gulfstream Park Racing Ass'n*, 37 So.2d 692 (Fla. 1948); *Dep't of Legal Affairs v. Sanford-Orlando Kennel Club*, 434 So. 2d 879, 881-82 (Fla. 1983).

Amendment 13 rests on an impermissible exercise of police power. Other courts have found examples of legitimate police power including: *Home Building & Loan Assn. v. Blaisdell*, 290 U.S. 398 (1934) (temporary measure of a mortgage moratorium, allowing an extension of time for redemption during the depth of the Depression when the state was under severe economic stress, was necessary to encourage trade and credit by promoting confidence in the stability of contractual obligations); *Energy Reserves Grp.* at 403 (setting a price ceiling was permissible for intrastate natural gas prices to protect consumers from the escalation of prices and to correct the imbalance between the interstate and intrastate markets caused by deregulation for natural gas.) But See *United States Tr.* at 431 U.S. 1, 17 n.13, (Even though a statutory covenant served an important purpose of energy conservation and environmental protection, it was invalidated because the impairment was not reasonable or necessary to serve the public interest.)

If the covenant in *United States Trust* was invalidated even though it served an important public purpose, *a fortiori*, Amendment 13 should be stricken as it serves no legitimate public purpose while depriving thousands of Florida citizens of

their fundamental rights in their property, their contracts while eradicating their livelihoods and historical legacies. This Amendment needs to be stricken down as unconstitutional for its overreaching encroachment on certain citizens while leaving others similarly situated unharmed.

WHEREFORE, based on the foregoing, Plaintiffs pray this Court deny the State's Consolidated Motion to Dismiss Plaintiffs' Complaint and grant any further relief necessary or proper.

Respectfully Submitted,

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CERTIFICATION OF COMPLIANCE WITH WORD LIMIT

I HEREBY CERTIFY that Pursuant to N.D. Fla. Local Rule 7.1(F), this memorandum of law is in compliance with the Court's word limit. According to the word processing program used to prepare this memorandum, the memorandum contains 5,541 words.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served to all counsel of record through the Court's CM/ECF system on this 11th day of December 2019.

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