



Racing Commission Should Abandon Effort to Legalize “Historical Racing” Slot Machines*

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Key Points

- The Texas Racing Commission does not have the authority to expand gambling by approving “historical racing.”
- Gambling in Texas is operated by economic cartels.
- Texas should not expand gambling to provide more money for government to spend.
- The cost of cartel-operated gambling exceeds its benefits.

The Texas Racing Commission has proposed changes to 16 TAC §301.1 to allow gambling on “historical racing, ... a previously run horse or greyhound race.” While on the surface “historical racing” may sound like something akin to horse racing and pari-mutuel wagering, a quick glance at the picture below of the type of “instant-racing” machine that could be allowed under this proposed rule change paints a very different picture:



“Yukon Willie’s Gold Rush!” looks very much like a slot machine, despite the small window in the upper right-hand corner that shows a three second clip of the end of a “historical” horse race. When seen in action, the similarities of an instant racing machine to a slot machine are even more apparent.

When voters went to the polls in 1987, they were asked to vote for or against “the legalization of pari-mutuel wagering under the Texas Racing Act.” Voters approved the proposition, and Texas has allowed betting on horse and greyhound racing since about that time.

It is highly doubtful, however, that Texas voters in 1987 or today would recognize the form of gambling the Commission is now trying to

make legal as a type of pari-mutuel wagering on horse races. The same goes for members of the Texas Legislature who voted to send the question of legalizing pari-mutuel wagering to the voters.

Acting without clear statutory authority is often a problem with state agencies as they attempt to tackle issues that are clearly the prerogative of the Texas Legislature—or the Texas people.

A recent example of this was the Public Utility Commission’s attempt to reverse 20 years of movement toward competition in the electricity market by imposing a \$3 billion electricity tax on consumers in the form of a capacity market. The PUC stopped its capacity market campaign after hearing from numerous members of the Legislature that the PUC was exceeding its authority.

Similarly, 15 members of the Texas Senate have sent a letter to the Commission noting problems with its rule making related to historic racing:

These rules appear to be an attempt by the Racing Commission to circumvent the Legislature’s authority to decide what types of gambling are and are not legal. In the rule proposal, the Commission essentially admits that it is expanding the definition of pari-mutuel wagering, as it says the “mode and manner of pari-mutuel wagering ... continues to evolve,” and that historical racing “is distinct from live or simulcast racing.” The proposed rules note the “primary advantage of historical racing is the additional revenue it provides” for horse and greyhound racing. While adopting new rules to reflect new or changing technologies is a good thing for the state, adopting rules that fundamentally change the types of ac-

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* This paper is based on comments the Texas Public Policy Foundation submitted to the Texas Racing Commission on proposed changes to 16 TAC §301.1.

tivities regulated, or allowed, is not an activity state agencies should undertake (Republican Caucus 2014).

Along with the admonition from the senators, the long and contentious history of the legislative debate over the legalization of gambling in Texas should be sufficient to stop the Commission's efforts to allow "historical racing" by administrative fiat.

Beyond the problem of the Commission encroaching into legislative policy decisions, the Foundation does not believe that historical racing should be approved at all in Texas. The Foundation's position is based on three reasons:

- Texas does not need more revenue. One of the main reasons given by proponents of expanding legalized gambling is the increased revenue that would come to the state. However, the Foundation believes that raising revenue to keep up with spending is not the way to operate government. Instead, Texas should keep government spending at the level necessary to match available revenue. This approach of "living within one's means" is simple and commonsense, and is in fact the same one that each Texas family puts into practice every day. Though Texas has accomplished this better than most other states, we still have plenty of room for improvement. For instance, since 2004 spending in Texas has increased 8.8 percent faster than population growth plus inflation, at a cost to Texans this year of more than \$8 billion (Peacock, Heflin, and Ginn 2014). Whether this increased revenue comes from expanding an existing tax like the margin tax or from instituting a new tax like a tax on gambling, the result is the same: more government. In addition, the revenue gains alleged in connection with gambling are almost always overstated. When voters approved pari-mutuel wagering in 1987, Texas' Legislative

Budget Office estimated that "pari-mutuel wagering could produce more than \$110 million a year for the General Revenue Fund," much more than is being generated today.

- The cost of gambling exceeds its benefits. There is ample data from other states that the hidden costs of gambling may largely offset any predicted gains. While there is general agreement that gambling can provide increased state revenues and that there are socioeconomic costs attached to these revenues, researchers disagree about the dollar value assigned to these costs and whether the net fiscal impact is positive or negative. Costs associated with gambling include: (1) a reduction of approximately 10 percent in state lottery revenues; (2) an investment of approximately 10 percent of revenues in regulatory costs for gambling; (3) criminal justice costs underwriting an 8 to 13 percent increase in crime; (4) lost state and local revenue resulting from diversion of spending from goods and services to gambling; and (5) lost jobs resulting from decreased spending on non-gambling goods and services. (Patterson 2005)
- Gambling laws in Texas are anti-market. Gambling as currently exists in Texas and as proposed under this rule is conducted by economic cartels authorized by law or administrative procedure. This type of arrangement has nothing to do with free markets or individual liberty. In fact, it has more in common with the Stamp Act and other acts of the English Parliament that made certain forms of commerce illegal in the American colonies except when conducted by those approved by the English government.

For all these reasons, the Foundation opposes the expansion of gambling by allowing "historical racing." ★

References

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