

MINUTES
WV RACING COMMISSION
Tuesday, June 7th, 2022
WV Racing Commission Conference Room

The WV Racing Commission met on June 7, 2022, to conduct business and consider administrative matters. Roll call was taken, and present were Chairman Ken Lowe Jr., Commissioner Figaretti, and Commissioner JB Akers. Counsel was represented by Anthony Eates.

Discussion to join the Appeal

Michael Williams – We're in the same position that we were when we first filed this litigation. We always knew this was going to be a case that was going to be appealed one way or another, this is an expected next step in our litigation. There are two parallel challenges to HISA, one is proceeding in the 5th circuit, which is traditionally a very conservative court. The 6th Circuit, while not as conservative as the 5th, also does tend to be conservative. So, the point here is that we have two shots to strike this law down.

Anthony Eates – The other plaintiff states that are in our case are already on board to appeal, and we just needed to meet the deadline to file this appeal. There is a timeline that allows us to ask for the appeal to be expedited and waiting till Thursday put us outside of that timeline. So, by getting your vote today enables us to ask the 6th Circuit to expedite the decision.

Michael Williams – Correct, the short summary here is that the 6th Circuit isn't like a regular court that constantly sits. It only gets together every other month and we are trying to get our case in the next batch of cases to be heard, which is in October. If we don't act today, there's a good chance that our case will be kicked into the next sitting, which is either in December (or January or March or further into next year).

Commissioner Ken Lowe – I was told that if this gets to the Supreme Court, the people there feel as though it will be overturned.

Commissioner JB Akers – Was there any similar language in the most recent 6th Court decision to the District Court case in Texas? The case in Texas was dismissed but the Texas District Court judge at least put language and opinion in that this was a legitimate challenge, and was essentially a unique scheme, that apparently did not exist before.

Michael Williams – The Kentucky decision largely tracked the Texas decision. They did say that we have standings, that the case is right, and there was no suggestion at any point that any of our claims were frivolous or without basis. I think as we move up into a more conservative venue in the 6th Circuit, and certainly if taken to the Supreme Court that would be a good venue for us as well. I think the types of issues that are gaining traction in conservative courts right now are very consistent with the kind of claims that we're making in this case. The court was really leaning on the fact that the Federal Trade Commission has a degree of oversight in the

scheme and could ultimately step in if the private entity went too far. It's not just giving a federal administrative agency immense power, it's giving a private agency immense power that's only supervised by bureaucrats in Washington, I think that is the ultimate concern.

Commissioner Ken Lowe – The federal government insures they are not accountable, that they cannot delegate the regulatory authority to a private entity.

Commissioner Figaretti – How much is this going to cost the Commission?

Michael Williams – You are benefiting from very expensive high-powered council out of Washington that you are not paying for, and we're exercising more of a supervisory role, making sure that the interests of the Commission in the State of West Virginia are protected. So, obviously there is some expense there for us to exercise that supervisor role, but not hundreds of hours of attorney time.

Anthony Eates – I have not billed you a penny for this case, if you don't join the appeal there is no chance of winning

Commissioner JB Akers – As far as I am concerned, there is no reason to not join the appeal immediately.

Commissioner Ken Lowe – Agreed.

Commissioner Figaretti – Agreed.

Director Joe Moore – Agreed.

Motion to join the appeal made by Commissioner JB Akers, seconded by Commissioner Figaretti. Motion passes.

Adjournment

Motion to adjourn made by Commissioner JB Akers, seconded by Commissioner Figaretti. Motion passes.