IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA.

FLORIDA QUARTER HORSE TRACK ASSOCIATION, INC.,

Plaintiff,

vs.

CASE NO. ________________

STATE OF FLORIDA, DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, DIVISION OF PARI-MUTUEL WAGERING; AND WEST FLAGLER ASSOCIATES, LTD., as General Partner of SUMMER JAI ALAI PARTNERS,

Defendants.

____/

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The plaintiff, Florida Quarter Horse Track Association, Inc., sues the defendants, State of Florida, Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, and West Flagler Associates, Ltd., as General Partners of Summer Jai Alai Partners, and alleges:

1. This is an action for declaratory and injunctive relief pursuant to chapter 86, Florida Statutes.

2. The plaintiff, Florida Quarter Horse Track Association, Inc. (the "Association"), is a Florida not for profit corporation authorized to conduct business in the State of Florida.

3. The organizational purposes of the Association are contained in Article III of the Articles of Incorporation filed with the Department of State and include the following purposes relevant to the Association's initiation and participation in this proceeding:

> III (A). The corporation is organized to serve public interests; specifically the interests of quarter horse racing, quarter horse race tracks, and quarter horse owners in the hopes of returning economically viable quarter horse racing back to Florida which the membership views as critical to achieve the public purposes expressed in s. 550.26165 and 550.2625, Florida Statutes. Accordingly, it shall not be operated for the benefit of private interests.
>
> * * *
>
> III (E). The corporation shall represent and advocate the interests of its members before public bodies, executive and legislative, administrative tribunals and courts of law in which the interests of the membership are affected.

4. All of the members of the Association hold pari-mutuel permits and/or licenses and one of the members, South Florida Racing Association, LLC, holds a quarter horse racing permit and operates a quarter horse race meet under its permit at a location in Miami-Dade County less than 5 miles of the location where Summer Jai Alai Partners carries on a competing pari-mutuel wagering business.

5. The interests that the Association seeks to protect through the initiation of this action are germane to the Association's organizational purposes set forth in paragraph 3 above and therefore are within the Association's general scope of interests and activity.

6. Although the individual members of the Association would have standing to initiate this action as competing pari-mutuel permitholders as provided in *West Flagler Kennel Club, Inc. v. Florida State Racing Association,* 153 So.2d 5 (Fla. 1963) and *Miami Beach Kennel Club, Inc. v. Board of Business Regulation,* 265 So.2d 373 (Fla. 3d DCA 1972), neither the claims asserted nor the relief sought through this complaint are of such a nature as to preclude the Association from fully and adequately representing the interests of its membership herein. *Florida Home Builders Association v. Department of Labor and Employment Security, 412* So. 2d 351 (Fla. 1982).

7. The Association has previously been determined to possess the requisite standing to maintain constitutional challenges on behalf of its members in this circuit. See *Florida Quarter*

Horse Track Association, Inc. v. Department of Business and Professional Regulation, Jefferson County Kennel Club, Washington County Kennel Club and Pensacola Greyhound Track, Leon County Circuit Court Case No. 2009CA2088 (Francis).

8. The defendant, State of Florida, Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering (the "Division"), is an agency of the executive branch of the government of the State of Florida and is the agency responsible for the regulation of Florida's pari-mutuel wagering industry and the enforcement of chapter 550, Florida Statutes.

9. Upon information and belief, the defendant, West Flagler Associates, Ltd. is a Florida limited partnership and is the General Partner of Summer Jai Alai Partners ("Summer Jai Alai Partners"). Also upon information and belief, Summer Jai-Alai Partners is a Florida general partnership that is the holder of a pari-mutuel wagering permit issued by the State of Florida (the "Summer Jai Alai Permit") and an operating license issued by the Division that collectively authorize Summer Jai Alai Partners to conduct pari-mutuel wagering on jai alai games at a location in Miami-Dade County, Florida.

10. The creation of the Summer Jai Alai Permit was purportedly authorized by the legislature in Section 1 of Chapter 80-88, Laws of Florida (the "Act").

11. The Act is presently codified as Section 550.0745 of the Florida Statutes entitled "Conversion of pari-mutuel permit to summer jai alai permit". Contained within subsection (1) of the Act are the class eligibility requirements for permit conversion under the Act:

> (1) The owner or operator of a pari-mutuel permit who is authorized by the division to conduct pari-mutuel pools on exhibition sports ***in any county having five or more such pari-mutuel permits*** and whose mutuel play from the operation of such pari-mutuel pools for the 2 consecutive years next prior to filing an application under this section has had the smallest play or total pool within the county may apply to the division to convert its permit to a permit to conduct a summer jai alai fronton in such county during the summer season commencing on May 1 and ending on November 30 of each year on such dates as may be selected by such permittee for the same number of days and performances as are allowed and granted to winter jai alai frontons within such county.

12. The Act had an effective date of June 11, 1980.

13. On the effective date of the Act, only two (2) counties in the State of Florida, Miami-Dade and Broward, qualified under the "five or more" pari-mutuel permit requirement of the Act.

14. There was in full force and effect on the effective date of the Act another section of Chapter 550, namely section 550.05, (Fla. Stat. (1979), that prohibited the issuance of any new thoroughbred, harness or greyhound permits at any location within 100 miles of any existing pari-mutuel wagering facility.

15. There was also in full force and effect on the effective date of the Act a section of Chapter 551, namely section 551.12, Fla. Stat. (1979) that prohibited the issuance of any new jai alai pari-mutuel permits at any location within 50 miles of any existing pari-mutuel wagering facility.

16. Because of these pre-existing statutory mileage restrictions prohibiting the issuance of any new permits, the "five or more permits in a county" requirement of the Act, no other county other than Miami-Dade or Broward could qualify for application of the Act.

17. The Act was enacted as a general law.

18. The effectiveness of the Act was not conditioned by the Legislature upon approval by vote of the electors in either of the affected counties, Miami-Dade County or Broward County.

19. No referendum was ever conducted in either Miami-Dade County or Broward County with respect to the Act.

20. Article III, Section 10, Fla. Const. (1968) entitled "Special laws" provides as follows:

> **Special laws.** -- No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.

21. The manner in which the publication of the notice of intention to seek the enactment of a special law are set forth in sections 11.02, 11.021 and 11.03, Fla. Stat. (1979). Specifically,

section 11.02 provides:

> **Notice of special or local legislation or certain relief acts.** -- ***The notice required to obtain special or local legislation*** or any relief act specified in s. 11.065(3) ***shall be by publishing the identical notice in each county involved in some newspaper as defined in chapter 50 published in or circulated throughout the county or counties where the matter or thing to be affected by such legislation shall be situated one time at least 30 days before introduction of the proposed law into the Legislature*** or, there being no newspaper circulated throughout or published in the county, by posting for at least 30 days at not less than three public places in the county or each of the counties, one of which places shall be at the courthouse in the county or counties where the matter or thing to be affected by such legislation shall be situated. ***Notice of special or local legislation shall state the substance of the contemplated law, as required by s. 10, Art. III of the State Constitution.*** Notice of any relief act specified in s. 11.065(3) shall state the name of the claimant, the nature of the injury or loss for which the claim is made, and the amount of the claim against the affected municipality's revenue-sharing trust fund.

22. The purpose of the requiring a notice of intention to be published in the affect area prior to the introduction of a special law is to apprise the residents in the locality to be peculiarly affected by such special law so that those interested may take steps to oppose its enactment. *Dickinson v. Bradley, 298 So.2d 352 (Fla. 1974).*

23. No notice of the intention of the Legislature to enact the Act was published in Miami-Dade or Broward County in the manner provided in sections 11.02, 11.021 and 11.03.

24. The Act violates Article III, Section 10 because the Act is a special law that was enacted without compliance with the publication requirements of said Article III, section 10 and sections 11.02, 11.021 and 11.03 and the effectiveness of which was not conditioned upon approval by vote of the electors in either of the areas affected---Miami-Dade County and Broward County---as required by Article III, Section 10.

25. The Act created a classification that was constitutionally closed at the time of the enactment of the Act and has since then and will forever remained constitutionally closed because the classification is impossible of replicated or duplicated in any other county of the State. *Florida Department of Business and Professional Regulation v. Gulfstream Park Racing Association, Inc.*, 967 So.2d 802 (Fla. 2007). Because the eligibility classification created by the Act is, was and will

forever be constitutionally closed, the Act is an unconstitutional special law.

26. The mere passage of time does not render an unconstitutional law constitutional.

WHEREFORE, the Association requests that the Court issue a declaratory judgment that:

(a) Determines and declares the rights of the parties under Section 1 of Chapter 80-88, Laws of Florida;

(b) Declares that Section 1 of Chapter 80-88, Laws of Florida, is a special law enacted under the guise of a general law in violation of Article III, section 10, Fla. Const. (1968); and

(c) Directs the Division to enforce the provisions of Chapter 550 against Summer Jai Alai Partners without regard to the unconstitutional provisions of Chapter 80-88, Laws of Florida, including the immediate revocation of the Summer Jai Alai Permit and all rights flowing from the Summer Jai Alai Permit.

DATED this 10th day of January 2011.

David S. Romanik FBN 212199
DAVID S. ROMANIK, P.A.
Attorneys for the Plaintiff/Association
P.O. Box 650
Oxford, Fl 34484
Telephone: 954/610-4441
Email: davidromanik@mac.com