



September 27, 2019

Illinois Gaming Board
160 North LaSalle Street
Suite 300
Chicago, IL 60601

Dear Chairman Schmadeke and Members of the Illinois Gaming Board:

Our association submits that **Churchill Downs Inc. has failed the most basic test of honesty and integrity, that it should consequently be denied a sports betting license linked to its Illinois property Arlington Park and that, absent its divestiture of Arlington to a qualified entity that will operate the facility as a racino, should also be denied any sports betting license(s) linked to any other gaming property in Illinois.**

Arlington representatives have for more than a decade lobbied Illinois governors and legislators for authority to offer casino-style games as a means to boost revenue at the track and create more jobs by generating funds to significantly improve the quality of horsemen's purses. In recent years, Arlington intensified that pursuit by insisting that the track be granted the ability to offer table games – in addition to slots – to ensure that its racino would be financially viable.

The track's push to operate a racino was entirely consistent with the intent of the Illinois Horse Racing Act, which was established to help create jobs, promote tourism, ensure that our state's racing industry remains competitive with those in other states, and boost Illinois agribusiness. And indeed, Arlington actively enlisted the cooperation and support of the Illinois Thoroughbred Horsemen's Association and the state's other horsemen's associations in that endeavor precisely because it recognized that partnership with us – our associations advocate for horse owners and trainers, backstretch workers, and other racing professionals whose livelihood depends on live racing – would enhance its own credibility.

But through their recent actions, Churchill and Arlington abruptly reversed Arlington's frequently cited commitment to a stronger future for Illinois horse racing that will bolster the growth of jobs and greater economic opportunity. They showed contempt for the good faith efforts of lawmakers to supply Arlington with the tools it had so ardently demanded. **And they violated the public trust as expressed by the terms of Public Act 101-31, the state's new gaming expansion law.**

By opting not to apply for a license to operate a racino at Arlington, Churchill has, contrary to the intent of the gaming law, denied Illinois government the additional tax revenue that was expected to result from the racino operation at Arlington and denied this state the economic benefits that also were anticipated to occur. Moreover, Churchill, which for generations was regarded as the nation's leading racetrack company but which in recent years has gradually abandoned its commitment to racing in favor of casino

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gaming, demonstrated its disdain for the Illinois racing industry by misrepresenting the nature of a racetrack's obligation to the racing community. In an Aug. 28 statement announcing its decision not to apply for the racino license at Arlington, Churchill described the necessary disbursement of some gaming revenue to the horsemen's purse account as a component of its "effective tax rate" that would create a competitive disadvantage relative to the rates paid by casino gaming operations. The notion that a track's required contributions to the horsemen's purse account constitute an unwelcome and unnecessary burden is highly offensive to the thousands of Illinois men and women, from backstretch workers to hay and feed suppliers, who derive their income from live racing. It also shows a fundamental disconnect from the mission of the state's horse racing industry as clearly described by statute.

Our industry exists because it provides economic benefits to Illinois, both at the tracks and throughout agribusiness, that no other form of gaming can provide. Lawmakers, through the development of the Illinois Horse Racing Act, have sought to balance the profit interest of a racetrack owner with the state's interest in promoting the growth of jobs at the track and beyond. A racetrack's contribution of a portion of its revenue to the horsemen's purse account is integral to that balance; it is solely through those funds that racing professionals – from trainers and backstretch workers to blacksmiths and veterinarians – have an opportunity to earn a living. **A racetrack owner's participation in the gaming industry is a privilege conferred by the State of Illinois.**

It is now abundantly clear that Churchill, which last October announced that it had secured a majority stake in the Rivers Casino in Des Plaines, the state's top grossing casino, is determined to maximize its shareholder returns (and executive compensation) without regard for the intent of the state's new gaming law to further competition among gaming outlets and across various forms of gaming, enhance the ability of the Illinois horse racing industry to compete with racing in other states, preserve and create jobs in racing, diversify and grow the state's tax revenue base, and serve the best interests of taxpayers.

In our view, Churchill's gambit could not be any more poorly timed in light of the re-evaluation of the purpose of a corporation undertaken by the United States' leading business executives and a renewed, bipartisan push to examine the deleterious effects caused by insufficient regulatory oversight leading to monopolistic practices that benefit particularly narrow interests.

Last month, the Business Roundtable, an association of chief executive officers from major American companies, revised its "Statement on the Purpose of a Corporation" to offer a more inclusive perspective on the obligations that businesses owe to stakeholders and urge "leading investors to support companies that build long-term value by investing in their employees and communities." Among the commitments made by these executives were:

- *Investing in our employees. This starts with compensating them fairly and providing important benefits. It also includes supporting them through training and education that help develop new skills for a rapidly changing world. We foster diversity and inclusion, dignity and respect.*
- *Dealing fairly and ethically with our suppliers. We are dedicated to serving as good partners to the other companies, large and small, that help us meet our missions.*
- *Supporting the communities in which we work. We respect the people in our communities and protect the environment by embracing sustainable practices across our businesses.*

The leaders of Illinois-based corporations are among the 181 signatories from across the country, but Kentucky-based Churchill's CEO William Carstanjen was not. Regardless, we ask that the Gaming Board

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take heed of the evolved perspective of the nation's top business leaders when evaluating Churchill's conduct and treatment of Illinois stakeholders – most especially the State of Illinois and its taxpayers.

It is not just the purpose of a corporation that is being reconsidered these days, but also the detrimental practices of some businesses. In recent years, the work of scholars has precipitated the interest of Democrats and Republicans at all levels of government – including Congress, the U.S. Department of Justice, and state attorneys general – to better understand how a handful of companies are coming to control vast swaths of the economy and the risks such dominance creates for economic growth and a level business playing field. And, while much of the focus has been on the tech sector, we believe that similar concerns are very much at play when evaluating the Illinois gaming landscape and that the Gaming Board has an obligation to take them into consideration as it formulates rules to implement Public Act 101-31. It plainly was not the intent of lawmakers and the governor to enable one company to engage in predatory, anti-competitive practices whose harms spill over into other sectors of the economy beyond gaming and that may hurt individuals and businesses located in Arlington Heights and across the state.

Indeed, no one has been so bold as to suggest that an Arlington Park that also offered casino gaming options wouldn't be profitable for the operator and state, even if, perhaps, it would not be as profitable as one particular operator, Churchill, believes. Nor have any suggested that Rivers Casino would be unprofitable if Arlington became a racino. In fact, an Arlington Park with horse racing and casino gaming might be more appealing to those looking for more diverse wagering options, and therefore unwelcome competition for the more limited Rivers. But, while the profit levels of Arlington and Rivers relative to one another are not the Gaming Board's concern, allowing Churchill to operate as a monopoly to the detriment of Illinois taxpayers and other stakeholders surely is.

Lack of Honesty and Integrity

Immediately following Churchill's decision to betray Illinois racing by declining to apply for a license, Arlington Park chairman emeritus Richard Duchossois told the *Daily Herald* that it was incumbent on lawmakers to change the new gaming law to Arlington's liking. The *Daily Herald* focuses its coverage on the Chicago suburbs and, as such, is the Illinois news outlet that most closely covers events relating to Arlington. "Churchill Downs Incorporated will not close Arlington Park," Duchossois asserted, according to the newspaper. "The Illinois state legislature will close Arlington Park. Only its members can change things." The legislature, of course, had just granted to Arlington everything – the authority to operate slots and table games, plus sports betting – that the track had insisted that it required to stay financially viable. It is Arlington, in fact, that had failed to conduct itself, through the legislative process, in good faith.

By early May, the final full month of legislative session, it had begun to appear to proponents of gaming expansion that lawmakers, in concert with the state's new governor, might actually – following years of deliberation – be inclined to approve a major gaming package that would allow racino operations at tracks and otherwise expand the availability of gaming options in this state. But while other proponents at that time grew more optimistic and closely engaged, Arlington, following more than a decade of lobbying for permission to operate a racino, moved to distance itself from that legislative effort. During an appearance before the House Executive Committee in early May, Tony Petrillo, president of Arlington Park, argued that lawmakers should separate the considerations of sports betting and other gaming because, in Arlington's view, there was a clear "pathway" to passage of sports betting but that the "pathway" to approval of a larger gaming expansion deal "seems very obfuscated." He stopped short of describing Arlington as an opponent of gaming expansion but repeatedly cited the "opposition" to gaming expansion,

specifically from incumbent casinos, as a reason to divide from the gaming equation the legislature's push to approve any gaming expansion beyond sports betting. Arlington, he told the committee, "would like ... to see those separated so that, if a big gaming bill does not pass, we [do not] walk away with nothing."

Petrillo's equivocation before that committee, especially when viewed relative to Arlington's full-throated pursuit of gaming expansion over more than a decade, was baffling. (His remarks were in stark contrast to those of the heads of the state's other two tracks – Tim Carey of Hawthorne Race Course and Brian Zander of Fairmount Park Racetrack – who expressed their unqualified support for gaming expansion that would provide their respective tracks with the opportunity to apply for racino licenses.) Naturally, any consideration of major gaming expansion attracts opposition from stakeholders who view such a move as adverse to their own interests. But this had previously not deterred Arlington from unambiguously stating its support for gaming expansion, at least in concept, in as much as it could position Arlington to operate the racino it had long desired. In hindsight, when viewed relative to Churchill's decision not to apply for the racino license offered under the new gaming law, Petrillo's comments raise the serious question of whether he was in fact acting as an agent of Churchill with the goal of disrupting any gaming development at Arlington that could potentially compete with the casino gaming operation at the Rivers Casino now controlled by Churchill. When traveling by road, Rivers is approximately 12 miles from Arlington.

Later in May, with Arlington averse to the legislature's advancement of the gaming bill, Rep. Bob Rita, the House point-person on the measure, directed other racing stakeholders to proceed with negotiations over the final language of the bill, as it pertained to horse racing, in Arlington's absence. The other two tracks, in the interest of inclusion, nonetheless extended to Arlington an invitation to join those talks. **Arlington's representatives declined to participate.** Representatives of the other tracks and horsemen proceeded, after two days of negotiations, to reach agreement on the horse racing terms of the bill. Minutes after we had completed those negotiations, Arlington's Petrillo and Jim Stumpf were seen exiting another office building, just doors away from the one at which our talks had occurred, and walking back toward the Capitol. We can only speculate as to why Arlington executives would skip negotiations over the session's most significant measure relating to horse racing – indeed, the legislature's most important horse racing-related measure in years – only to position themselves within such close proximity of the talks they had decided to avoid.

Yet even as Arlington refused to directly engage in discussion concerning the core racing provisions of the bill, its agents did attempt to surreptitiously maneuver language hostile to horsemen, in the form of House Amendment 2, into Senate Bill 690 (the measure that would become Public Act 101-31). Lawmakers did not advance the language that Arlington had covertly positioned in House Amendment 2; House Amendment 3, which became the bill and eventually the public act, rejected that proposal and respected the agreement reached by the other tracks and horsemen. But since adjournment of spring session, Arlington has been actively engaged in pressing lawmakers to approve, as a trailer bill during the fall veto session, the language that it had been unsuccessful in positioning in the final version of Senate Bill 690. (The Arlington-sought language, ostensibly geared to strengthen supports for backstretch workers, is in truth designed to suppress the ability of horsemen's associations to advocate effectively on behalf of our own membership by restraining our ability to allocate our own resources as we determine to be necessary. Approval of this language would in fact harm – not help – the interests of backstretch workers in as much as the horsemen's associations, which fund benevolence programs for backstretch workers and otherwise advocate on their behalf, would be hamstrung in our ability to advocate and, when necessary, push back against track-led efforts to diminish the scope of live racing that is necessary to support the livelihood of backstretch workers and other racing professionals.)

Immediately following session adjournment, Arlington quickly returned to its longstanding public embrace of gaming expansion – casting into question, yet again, the track's true intent and motive. The *Daily Herald* published an article noting that Arlington had “lobbied state lawmakers for two decades for more gambling to boost a struggling state horse racing industry” and reporting that Arlington officials were “pleased with legislation passed over the weekend permitting slots, table games and sports betting at the Arlington Heights-based track.” The newspaper quoted Petrillo as saying: “We're thankful to the legislative leaders in the House and Senate and governor for getting this done.”

Finally, when discussing the subject of honesty and integrity, or the lack thereof, we would be remiss not to point out that, as best we presently know, contrary to the Gaming Board's direction at the time it approved Churchill's acquisition of a controlling interest in Rivers that “Churchill Downs Incorporated [make] a good faith effort to sell up to 10% of the equity value of Midwest Gaming Holdings, LLC to statutory investors within 90 days of the closing of this transfer upon the same price and terms as the Casino Investors, Inc. received in this transfer,” such transactions have not occurred and there is no public evidence that Churchill has, in fact, demonstrated such a good faith effort.

And so, we must point out that at a time when Illinois elected officials have brought renewed scrutiny to the treatment of minorities and the avenues available for them to overcome longstanding prejudices that have prevented their economic advancement, and note that opportunities for minority participation were very much on the mind of state policymakers as legislation authorizing the sale of recreational marijuana and the development of a \$45 billion capital infrastructure plan were passed and signed into law, that Churchill appears not to have respected that Gaming Board order and may believe that it is free to act with impunity and without sanction from the Board.

Exploiting the Law, Undercutting the Best Interests of Illinois

Churchill remains in control of Arlington, the state's flagship track, and its continued ownership precludes the possibility of an alternative owner seeking to realize the racing potential of that track while also petitioning the General Assembly to re-open the process to apply for a license to operate a racino there. (Such an amendment may be necessary to authorize a racino at Arlington, now that Churchill has deliberately run out the clock on the application process that was provided by existing state law.)

Yet even as Churchill is squelching the growth of Illinois horse racing, its control of Arlington appears to create a distinct advantage for Churchill, in the sports betting arena, over other casino gaming operations seeking to engage in sports betting. Under Public Act 101-31, each casino may be entitled to use their single location to operate sports betting and also register individuals who wish to engage in sports betting via a mobile application. However, Arlington and the state's other racetracks may be permitted to engage in these activities – operation of sports betting and registration of individuals to make sports wagers via mobile – at up to four locations including the racetrack and three inter-track wagering locations. Thus, by virtue of its continued control of Arlington, Churchill, in addition to the opportunity it may have to operate sports betting and register mobile users at Rivers Casino, is positioned to conduct this activity at four additional and separate locations.

Churchill also is poised to abuse an antiquated provision in state law that permits a track to take funds from the horsemen's purse account to subsidize its own operations. This taking – called “recapture” and unique to the horse racing industry in Illinois – has long undermined the ability of our industry to compete

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with racing in other states by depleting the purses available to horsemen here. (Since recapture began in 1995, Arlington has taken \$88.9 million from horsemen's purses. In 2019 alone, the track is taking \$4.47 million. The state government, as required by law, initially replenished the purse accounts following recapture. But for more than 15 years, Illinois lawmakers have failed to appropriate funds to reimburse the purse accounts.) Illinois lawmakers, as part of the new gaming law, intended to end the practice of recapture and, in doing so, provide an additional boost to our industry. Once a track is deriving revenue from a racino operation, under the new law, the Illinois Racing Board will not again certify recapture for that track. But Churchill, having opted not to pursue a racino at Arlington, could under the new law conceivably continue to take that subsidy – thereby perpetuating the damage to the purse account and the economic opportunity that is intended to result from Illinois horse racing – indefinitely.

Churchill's retreat from any meaningful commitment to live racing in this state stunned the Racing Board, which, in an extraordinary move on Tuesday, Sept. 17, postponed for a week its vote on whether to grant to Arlington a schedule of 2020 racing dates and directed representatives of Arlington to return before commissioners prepared to demonstrate a commitment to Illinois racing. But while Churchill and Arlington representatives refused on Tuesday, Sept. 24 to commit to steps that would promote the growth of Illinois horse racing, the Racing Board granted to Arlington its requested 2020 dates. (As if to underscore the duplicity of its relationship to live racing, Churchill on Sept. 5 announced a plan to invest \$200 million in the construction of a new racing facility, called "New Latonia," in northern Kentucky – where the company's proposed track would not be in competition with its own casino.)

Surely, the General Assembly did not intend for one out-of-state corporation to effectively stifle the intended growth of the Illinois horse racing industry, evidently as a means to reduce the competition facing its own casino, while at the same time exploiting state law to dramatically expand its sports betting footprint and continuing to undermine purses through a practice that lawmakers, acting on the assumption that Churchill would develop a racino at Arlington, moved to abolish. Respectfully, we again submit that it certainly is not the role of the Gaming Board to enable Churchill's efforts to maximize profit to the detriment of competition (both the competition an Arlington racino might pose to the Rivers Casino, and the competition of our state's horse racing industry to those in other states), the state's economic potential, and the best interests of Illinois taxpayers.

As the Gaming Board prepares to develop administrative rules to implement the terms of sports betting and, eventually, consider applications for sports betting licenses, we urge the Gaming Board to:

1. Formulate the test of character and fitness embodied in the rules to emphasize the careful consideration of the honesty and integrity of the license applicant.
2. Deny Churchill's request for a sports betting license linked to Arlington as a demonstration of the Board's commitment to ensuring that a prospective licensee that has shown contempt for the good faith efforts of Illinois lawmakers and has violated the public trust as expressed by the terms of Public Act 101-31 will not be rewarded with the privilege to engage in sports betting.
3. Deny Churchill's request for a sports betting license linked to Rivers Casino or any other gaming property in Illinois until such time that Churchill has divested itself of Arlington, to a qualified entity that will operate the facility as a racino, as a demonstration of the Board's commitment to promoting fairness, honesty and integrity, and competition across the state's gaming landscape.

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If the Gaming Board does opt to grant Churchill a sports betting license linked to Arlington, notwithstanding our objections and reasoning articulated above, then we would urge the Board to condition the award of any such license on Arlington's written agreement with the Illinois Thoroughbred Horsemen's Association to distribute an adequate share of sports betting revenue to the horsemen's purse account and to stipulate that the sports betting license may remain in effect only so long as such sharing with purses occurs. This allowance would, despite Churchill's best efforts to skirt any accountability to the Illinois horse racing industry, serve, at least to a degree, to bolster purses and support the interests of Illinois taxpayers. We also would urge the Board to evaluate, as another avenue to advance the intent of Public Act 101-31 as it relates to horse racing, the conditioning of any sports betting license awarded to Churchill on Arlington's commitment to forego recapture for so long as the sports betting license may remain active.

We appreciate the opportunity to share our perspective and, should the Board desire, would be glad to discuss this matter with the Gaming Board's staff or during a public appearance before the Board. Please do not hesitate to contact us if we may act as a resource during the Board's development of the administrative rules and its consideration of sports betting license applications.

Sincerely,



Mike Campbell

Illinois Thoroughbred Horsemen's Association

(847) 577-6464 / 

cc: The Honorable J.B. Pritzker, Governor of Illinois
The Honorable Michael J. Madigan, Speaker of the Illinois House
The Honorable John J. Cullerton, President of the Illinois Senate
The Honorable Jim Durkin, Republican Leader of the Illinois House
The Honorable William E. Brady, Republican Leader of the Illinois Senate