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Historical racing is a David vs. Goliath battle, and Goliath needs to pay a bigger cut.

BY LINDA BLACKFORD

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The saga of historical horse racing — which pitted the tiny religious nonprofit Family Foundation of Kentucky against the entire Kentucky horse establishment — is a true David and Goliath story that’s spanned decades and now has the racing industry in a panic.

And it all started because Goliath invited David to get involved.

That’s right, way back in 1994, two horse industry lobbyists invited Family Foundation President Kent Ostrander to a fancy lunch at the Thoroughbred Club next door to Keeneland. At the time, the Family Foundation had just started with two employees, Ostrander and policy analyst Martin Cothran.

“They took me out to lunch and said ‘we’re fighting casinos, they’re bad news, we think you could help us,’” Ostrander said recently. “I told them, the Family Foundation doesn’t want to go around telling people not to do things, that’s not our purpose.’ ”

But then Ostrander started to research casino gambling and realized it did fit in with their mission because it often had a harmful effect on families. The racing industry opposed casinos because they rightfully feared they would hurt race tracks and the betting that kept them afloat. Expanded gaming was always going to be a hard sell because it required a Constitutional amendment approved by Kentucky voters.

So over the years, the General Assembly made it clear they were not going to pass any kind of expanded gaming legislation, and the racing industry figured out there was a better way to harness gambling’s profits and keep them under their control. It was known as historical horse racing, or HHR, and it created a game using already run horse races that could be bet on. The machines looked remarkably like slots machines, acted remarkably like slots machines but potentially could meet the definition of parimutuel betting — betting against other bettors as opposed to betting against the house — allowed by Kentucky’s Constitution.

In 2011, tiny, rundown Kentucky Downs racetrack, sitting on the Tennessee border, first set up the slots-like machines and lots of money quickly followed.

“The horse industry said if we can’t beat them, let’s own them, and they flipped,” Ostrander said. “That’s when we were hung out to dry.”

A few years later, a couple of positive court decisions, a ruling by the Kentucky Racing Commission, and a wink and a nod from politicians on both sides of the aisle convinced the rest of the tracks to go along, and soon the state was filled with casinos that were not called casinos full of slot machines that were not called slot machines. And the money followed. So much money — last year's handle was \$2.2 billion — to help the industry with breeders awards and purses and education programs that a decade later, Kentucky is largely considered the dominant state for both Thoroughbred racing and breeding in the nation.

But the folks at the Family Foundation, who weren't even thinking about gambling as a problem until the racing industry asked them to, disagreed. And kept disagreeing. And kept paying for lawsuits that challenged those court decisions. Until finally, the case made its way to the Supreme Court, which in a 7-0 decision in September said historical racing machines were not parimutuel.

"It's painfully ironic because I haven't wanted to spend 26 years working against gambling, but some families have been devastated (by gambling addictions)," Ostrander said.

And his group will keep fighting. On Thursday, the Senate Licensing and Occupations Committee [passed a bill](#) to redefine "parimutuel" to include historical racing. Ostrander said it won't be that easy.

"We will work against any effort to redefine to skirt the Constitution and history of law in Kentucky in order to redefine parimutuel," he said.

People in the horse industry are worried. Suzi Shoemaker, who founded and owns Lantern Hill Farm in Midway, said most people in the industry thought earlier court decisions and the Racing Commission decree would be enough to make historical racing stand.

"No one really thought that historical racing would be as successful as it has been in terms of funding purses to the point where all kinds of people are coming from other states to relocate here and buy farms," she said. While Kentucky has always dominated the breeding industry, the best horses raced where the purses were higher. "We've gone from being very low on the totem pole to being one of the best in the country for purses," she said. "So to take that away could decimate our industry."

DAVID OR GOLIATH?

In some ways, it's easy to sympathize with David's cause in this matter because of Goliath's audacity in building bricks and mortar casinos on shaky legal footing while denying that's what they were. It's obvious this has become a point of pride for the Family Foundation, in addition to their opposition to gambling. They're right that it's addictive and can destroy families, but laws have never stopped gambling before.

It's also funny to watch how the issue has created insta-bipartisanship in the Legislature as some of the most conservative and most progressive legislators scramble to save a signature industry.

In the end, that's what horse racing and breeding is, a signature of Kentucky that brings untold tourists and dollars into the state and provides Kentucky's signature landscape of horse-filled pastures.

But. There is nothing more irritating than watching a sport based on a pastime for millionaires come hat in hand to the Legislature about how it's on the verge of bankruptcy. The horse industry is already propped up by the state government, such as the near total absence of sales taxes on the millions of dollars of horses sold at Keeneland and Fasig Tipton every year.

So if it can, and it's a big if, the Legislature should come up with an ironclad way to preserve historical racing, although it's far from clear that the House will pass Schickel's Senate bill. (It should also [legalize sports betting](#).) Then in return, it should take a larger cut for the General Fund than 1.5 percent of the returns.

It's a complicated formula but out of \$2.2 billion collected last year, most of the money was returned to bettors. The state kept \$33.8 million, but only \$15.1 million went to the General Fund. The rest goes to race purses, incentives and education programs to help the industry.

So take more and do more good with it. The state could put more money into gambling recovery programs. That would be the compromise. But I'm not optimistic. David is not known for compromise and Goliath seems uninterested in handing over a bigger share. The courts are going to get this epic battle back again.



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