

The Proposed Constitutional Amendment to Ban Greyhound Racing in Florida

By: Ryan Parker*

On October 31, 2017, Senator Tom Lee filed a proposed constitutional amendment to ban greyhound racing in the State of Florida.¹ Senator Lee is one of thirty-seven members of the Constitution Revision Commission (CRC). The CRC convenes every twenty years to review the Florida Constitution and propose changes for voter consideration.² The current CRC was sworn in on March 20, 2017,³ and the deadline for the CRC to file its proposals with the Secretary of State is May 10, 2018.⁴ A minimum of twenty-two commissioners must vote in favor of the measure for it to be placed on the ballot.⁵ If at least sixty percent of voters approve a proposed amendment, it becomes effective as an amendment or revision to the Florida Constitution.⁶

Greyhound Racing in Florida

Greyhound racing has been a part of Florida's history for nearly one hundred years. The first Florida greyhound track was built in 1922 in an area that eventually became Hialeah.⁷ That track later closed, but thereafter, tracks were established in St. Petersburg in 1925, in Miami in 1926, in Sanford-Orlando in 1927, in Miami Beach in 1927, another in Miami in 1930, and in Tampa in 1932.⁸ Florida is one of only ten States where greyhound racing is still legal.⁹ Currently, there are sixteen greyhound tracks in Florida,¹⁰ twelve of which are operational.¹¹ Florida has more tracks in operation than any other state.¹²

In recent years, greyhound racing has been the source of controversy in Florida. It has been the subject of countless news stories, articles, and proposed legislation. In addition, multiple animal welfare groups advocate for ending the sport. Many people in Florida feel that racing greyhounds are treated unfairly. The controversy surrounding the industry relates to the greyhounds' living conditions, the use of steroids and other illicit drugs to increase performance, and the number of dogs that suffer injuries or death, among other things.

Racing greyhounds are confined in small cages for long periods of time. The minimum size requirements in Florida for greyhound kennel crates is only "two feet wide, three feet long, and 32 inches high."¹³ Florida does not have any regulations regarding the amount of "turn-out" time each greyhound must have per day.¹⁴ However, in another state, a former greyhound trainer estimated that greyhounds receive less than three hours of turn-out time daily.¹⁵ The result is that greyhounds spend more than twenty hours a day in confinement.

Several bills have been proposed in Florida that would require greyhound tracks to report injuries; however, as of the date of this article, none have passed. In March 2016, the Florida Legislature "included a provision in the state budget that requires the Florida Department of Business and Professional Regulation (DBPR), Division of Pari-Mutuel Wagering to implement injury reporting through the creation of a new Administrative Rule."¹⁶ However, that rule has not yet been implemented.¹⁷ Therefore, there is no reliable statistical data showing how many greyhounds are injured per year in Florida.

Other states have been required to report injuries for years. For instance, in 2014, there were 580 reported injuries in West Virginia,¹⁸ a State that has fewer greyhound tracks than Florida. In May 2013, greyhound death reporting became mandatory in Florida.¹⁹ Between May 31, 2013, and November 30, 2014, a total of 183 greyhound deaths were reported to the Florida Department of Business and Professional Regulation's Division of Pari-Mutuel Wagering.²⁰

Another serious issue plaguing greyhound racing is the use of anabolic steroids and other illicit substances to enhance performance. In 2013, anabolic steroids were found at a kennel that houses greyhounds that race at two separate tracks.²¹ A state investigator performing an inspection found a syringe with an attached needle that contained testosterone as well as other steroids.²²

In addition, there have been several instances of greyhounds testing positive for cocaine. For example, a greyhound trainer was fined after a dog in his control tested positive for a metabolite of cocaine after racing at a track in Palm Beach in November 2008.²³ As recently as April 2017, a greyhound named "Flicka" tested positive for a metabolite of cocaine, and that was only one of several positive tests this year for the same dog.²⁴

Over the years, the Florida Legislature has considered bills that would ban the use of all anabolic steroids in Florida greyhound racing. To date, none have passed. However, there has recently been a bipartisan effort pushing again for the ban.²⁵ Representative Carlos Guillermo-Smith, and Senator Dana Young filed separate bills in October of this year that would accomplish the same goal.²⁶ The proposals would amend section 550.2415(1)(a) of the Florida Statutes to add a provision that would make it a violation of the statute for a greyhound to test positive for anabolic steroids before or after a race.²⁷

Decoupling

The motivation for continuing greyhound racing in Florida is no secret. Pursuant to Florida law, only a "pari-mutuel permitholder" is permitted to operate a cardroom.²⁸ A "pari-mutuel facility" is defined by statute as "a racetrack, fronton, or other facility used by a permitholder for the conduct of pari-mutuel wagering."²⁹ A cardroom operator *must also be a licensed pari-mutuel permitholder*.³⁰ A licensed cardroom can offer poker and/or dominoes.³¹ They are huge money-makers. In fiscal year 2016-2017, cardrooms in Florida reported over \$156 million in gross receipts.³² In addition to card games, slot machine gaming is authorized at pari-mutuel facilities in certain counties.³³

As a result of this legislation, greyhound racing and cardroom games are essentially joined at the hip. With the exception of Indian gaming facilities, only pari-mutuel facilities can operate a cardroom in Florida.³⁴ Accordingly, if a facility wishes to continue to offer profitable card games, it must also continue to maintain a full schedule of live racing, which consists of no fewer than ninety percent of the live races the facility conducted during the fiscal year that its cardroom license was issued.³⁵ As an example, the Naples-Fort Myers greyhound track had to run 393 performances in fiscal year 2012 to keep its cardroom license.³⁶

Many proponents of “decoupling” believe that pari-mutuel facilities would either reduce or discontinue greyhound races if legislation were passed removing the requirement that permitholders conduct races in order to operate cardrooms and/or slot machines. According to an independent study commissioned by the Florida Legislature, greyhound tracks in Florida sustained a combined operating loss of \$35 million in 2012.³⁷ Only three of the thirteen tracks operating at the time made a profit from wagering on greyhounds.³⁸ The report notes that greyhound track cardrooms offset the loss with an operating profit of \$39 million.³⁹

There have been many efforts in recent years to decouple greyhound racing in Florida. Several bills have been proposed, but none have passed. There has never been a proposed constitutional amendment, until now.

The Proposed Amendment

The proposed amendment would add new sections to articles X and XII of the Florida Constitution that prohibit wagering on greyhound or other dog races after a specified date. The proposed language with respect to article X provides:

A person that is licensed to conduct gaming or pari-mutuel operations may not race greyhounds or any other member of the *Canis Familiaris* subspecies in connection with any wager for money or any other thing of value in this state. A person in this state may not wager any money or other thing of value on the outcome of a dog race. By general law, the legislature shall specify civil or criminal penalties for violations of this section and for activities that aide or abet violations.⁴⁰

The prohibition on dog racing would take full effect on July 1, 2021.⁴¹

The new section to article XII would delineate a schedule for phasing out greyhound racing in Florida by the year 2021. For the 2018-2019 state fiscal year, each greyhound permit holder would be authorized the same number of racing days for which it was authorized in the 2017-2018 state fiscal year.⁴² Thereafter, the maximum number of racing days for each permit holder would be reduced by one-third in the 2019-2020 state fiscal year, and by two-thirds in the 2020-2021 state fiscal year.⁴³ Effective July 1, 2021, all dog racing in connection with any wager for money or any other thing of value would be prohibited.⁴⁴

The new section to article XII also provides that “[t]he failure to conduct live greyhound racing after June 30, 2021, does not constitute grounds to revoke or deny other gaming licenses to a person that is a greyhound permitholder on November 6, 2018.”⁴⁵

It appears the proposed amendment is gaining traction. Former Senate President, and current CRC Commissioner, Don Gaetz, is a co-introducer of the proposal, as is Commissioner Brecht Heuchan.⁴⁶ Commissioner Gaetz has a history of supporting pro-greyhound legislation. During the 2015 legislative session, he co-introduced the “Victoria Q. Gaetz Racing Greyhound Protection Act” which would have required the reporting of racing greyhound injuries within a

certain timeframe.⁴⁷ That bill passed by a unanimous vote in the Florida Senate, but died in the House of Representatives.⁴⁸

What the Amendment Means

If approved, the amendment would prohibit wagering on greyhound or other dog races in the State of Florida, effective July 1, 2021. It would also phase out the sport beginning in the 2019-2020 state fiscal year. Finally, and most importantly for the owners of pari-mutuel facilities, the amendment would not affect their other gaming licenses. Accordingly, if the amendment passed, greyhound and other dog racing would be banned, but the facilities that currently race greyhounds would be allowed to continue the profitable side of their business, *i.e.* the cardrooms and/or slots. Essentially, it would be a win for all sides—animal welfare groups, the Florida gaming industry, and of course, the greyhounds.

At this time, there is no way of knowing whether the measure will make it onto the 2018 ballot. However, it is a significant step in the right direction towards ending greyhound racing in Florida.

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¹ The proposed amendment is available at <http://www.flcrc.gov/Proposals/Commissioner/2017/0067/?Tab=BillText>.

² Art. XI, § 2, Fla. Const.

³ CRC Office – Press Release, Florida Constitution Revision Commission to Hold First Meeting, Mar. 17, 2017, available at <http://flcrc.gov/Media/PressReleases/Show/22>.

⁴ Constitution Revision Commission, 2017-2018, How a Proposal Advances Through the CRC Process, available at <http://flcrc.gov/Reference>.

⁵ Constitution Revision Commission, 2017-2018, Rule 5.4.

⁶ Art. XI, § 5(e), Fla. Const.

⁷ Greyhound Racing Association of America - The History of Greyhound Racing, http://www.gra-america.org/the_sport/history.html.

⁸ *Id.*

⁹ See www.grey2kusa.org/action/states.html.

¹⁰ Department of Business & Professional Regulation, Division of Pari-Mutuel Wagering, FAQs, <http://www.myfloridalicense.com/dbpr/pmw/faq-pmw.html>.

¹¹ See Kate MacFall, *Greyhound Racing*, Paw Review, Winter 2017, at 10.

¹² *Id.*

¹³ Fla. Admin. Code R. 61D-2.023(2)(e)1.

¹⁴ Amelia Cook, *High Stakes: Greyhound Racing in the United States* 22 (2015), <https://www.grey2kusa.org/pdf/USreportWeb.pdf>. Turn-out time is the time a greyhound spends outside of its cage.

¹⁵ *Id.*

¹⁶ Katie Lagrone & Matthew Apthorp, *Greyhound Injuries Still Unknown in Florida*, WPTV, Oct. 14, 2016, <http://www.wptv.com/longform/the-fate-of-florida-greyhounds-still-largely-unknown-state-has-to-implement-injury-reporting-protocols>. See also Kate MacFall, *Greyhound Racing*, Paw Review, Winter 2017, at 10.

¹⁷ See Kate MacFall, *Greyhound Racing*, Paw Review, Winter 2017, at 10.

¹⁸ Amelia Cook, *High Stakes: Greyhound Racing in the United States* 23 (2015), <https://www.grey2kusa.org/pdf/USreportWeb.pdf>.

¹⁹ *Id.* at 29. See also Fla. Admin. Code R. 61D-2.023(3)(k) for the specific reporting requirements.

²⁰ Amelia Cook, *High Stakes: Greyhound Racing in the United States* 29 (2015), <https://www.grey2kusa.org/pdf/USreportWeb.pdf>.

²¹ *Id.* at 32.

²² *Id.*

²³ *Id.* at 41.

²⁴ Kyle Swenson, *Dog Racing “has a Drug Problem” as 12 Florida Greyhounds Test Positive for Cocaine*, The Washington Post, July 6, 2017, https://www.washingtonpost.com/news/morning-mix/wp/2017/07/06/dog-racing-has-a-drug-problem-as-12-florida-greyhounds-test-positive-for-cocaine/?utm_term=.6d82646addbd.

²⁵ Jordan Ferrell, *State Legislators Revive Bipartisan Effort to Ban Steroids in Dog Racing*, WLTV, Oct. 27, 2017, <http://www.firstcoastnews.com/news/local/florida/state-legislators-revive-bipartisan-effort-to-ban-steroids-in-dog-racing/486626462>.

²⁶ *Id.*

²⁷ *Id.* See also H.B. 463 (2018); S.B. 674 (2018).

²⁸ §§ 849.086(2)(f), (7), Fla. Stat. (2017).

²⁹ § 550.002(23), Fla. Stat. (2017).

³⁰ § 849.086 (2)(f). Fla. Stat. (2017).

³¹ Department of Business & Professional Regulation, Division of Pari-Mutuel Wagering, Cardroom FAQs, <http://www.myfloridalicense.com/dbpr/pmw/FAQs-Cardrooms.html#WhatTypesOfGamesAreOffered>.

³² Cardroom Gross Receipts from Regular Play and Tournament Play, Fiscal Year 2016/2017, Division of Pari-Mutuel Wagering, Office of Revenue and Financial Analysis <http://www.myfloridalicense.com/dbpr/pmw/documents/Cardroom2016-2017.pdf>.

³³ Section 551.101, Florida Statutes (2017), authorizes slot machine gaming at pari-mutuel facilities located in Miami-Dade County or Broward County under certain circumstances.

³⁴ Department of Business & Professional Regulation, Division of Pari-Mutuel Wagering, Cardroom FAQs, <http://www.myfloridalicense.com/dbpr/pmw/FAQs-Cardrooms.html#CanIOpenACardroom>.

³⁵ § 849.086(5)(b), Fla. Stat. (2017).

³⁶ Spectrum Gaming Group, *Gambling Impact Study*, October 28, 2013, at 84.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Commissioner Proposal 0067, 2017-2018 Const. Rev. Comm. To access the proposed amendment, visit <http://www.flcrc.gov/Proposals/Commissioner/2017/0067/?Tab=BillText>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See <http://www.flcrc.gov/Proposals/Commissioner/2017/0067/?Tab=BillText>.

⁴⁷ See S.B. 2 (2015).

⁴⁸ The history of the bill can be found at <https://www.flsenate.gov/Session/Bill/2015/0002>.