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TESTIMONY OF KEVIN M. FOWLER IN OPPOSITION TO H.B. 2032
HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS
JANUARY 30, 2019

Dear Chairman Barker and Members of the Committee:

My name is Kevin Fowler and I am an attorney with the Topeka law firm of Frieden & Forbes, LLP. I represent and appear on behalf of the managers of the Kansas Star Casino, Mulvane, Kansas (“Kansas Star”), and the Kansas Crossing Casino, Pittsburg, Kansas (“Kansas Crossing”). Kansas Star and Kansas Crossing (collectively “casinos”), each of which is a state-owned and -operated casino under the Kansas Expanded Lottery Act, K.S.A. 74-8733 *et seq.* (KELA), appreciate the opportunity to share our views in opposition to HB 2032.

The casinos represented in this testimony strongly support sports wagering in Kansas but believe that HB 2032 does not provide the right statutory framework. In our view, HB 2032 merits consideration only as a measure that will effectively prohibit sports wagering in this State.

As written, HB 2032 does not expressly authorize or legalize any form of “sports gambling” in Kansas. Because KELA does not authorize sports gambling, wagering or betting and such activity is currently unlawful, we view this omission as a legally significant barrier to sports wagering in this State. Although it is doubtful that Section 1(a) of the bill can be reasonably interpreted as giving implied power to the Kansas lottery to authorize otherwise unlawful sports gambling, any such unqualified power would violate Article 2 of the Kansas Constitution by delegating legislative authority to an executive agency without any discernible standards for implementation. Authorization to conduct sports wagering in this State should be clearly expressed by the Legislature and not left to the imagination.

Section 1(a) of the bill clearly prohibits each of our four (4) existing state-owned and -operated casinos from conducting any sports wagering on behalf of the State by expressly stating that any sports gambling “shall be conducted solely on the premises of a racetrack gaming facility and shall be managed and operated by one or more racetrack gaming facility managers.” Although KELA has authorized the establishment of racetrack gaming facilities at licensed pari-mutuel racetracks since 2007, no racetrack gaming facility has ever been opened or operated in this State. Indeed, according to the Kansas Racing and Gaming Commission, the only commercial

pari-mutuel racetracks in Kansas ceased operation more than a decade ago and all pari-mutuel licenses for these racetracks were revoked in June of 2010. In other words, HB 2032 restricts sports gambling to racetrack gaming facilities and managers which do not exist, have never existed and have no reasonable prospect of being established in the foreseeable future.

If the purpose of HB 2032 is to cause the re-opening of pari-mutuel racetracks and the establishment of racetrack gaming facilities, there is no reason expect that the bill can or will accomplish this objective. Nationally, pari-mutuel racing and wagering have been declining sources of entertainment, economic activity and tax revenue for the past two decades. For example, only 18 greyhound racetracks are currently operating in six states and 11 of these tracks are in Florida. Since Florida amended its constitution in November 2018 to outlaw greyhound racing by the end of 2020, only 7 greyhound racetracks will remain in operation within the immediate future. Indeed, pari-mutuel racing has been dead for more than 10 years in this State due to the operation of ordinary market forces. Because sports wagering is a very low margin endeavor, with an average of 95% of all wagers returned to winning bettors, it is extremely unlikely that HB 2032 will spur the re-opening of any pari-mutuel racetrack or the establishment of any racetrack gaming facility in Kansas.

If authorized sports wagering is intended to promote economic activity, to raise revenue and to help move such activity out of the illegal market and into a regulated one, existing casino managers should not be excluded from conducting and managing sports wagering on behalf of the State. To date, existing casino managers have made capital investments in Kansas of nearly \$1 billion and have an established record of delivering economic development and revenues for our State. The most recent available data reflects that, since the commencement of casino operations under KELA, the casinos generate more than \$33 million in economic activity per month, and the State and affected communities directly receive approximately \$100 million in gaming revenues per year. As a matter of logic and common sense, no sports wagering initiative should exclude state-owned and -operated casinos which have an established record of success in promoting economic activity and generating revenue for the State of Kansas.

I will be happy to stand for questions.

Respectfully submitted,



Kevin M. Fowler

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