

JERRY JACOBS	*	NO. 2007-CA-0509
VERSUS	*	COURT OF APPEAL
CHURCHILL DOWNS	*	FOURTH CIRCUIT
LOUISIANA HORSERACING	*	STATE OF LOUISIANA
CO., LLC D/B/A THE NEW	*	
ORLEANS FAIR GROUNDS	*	
RACE COURSE AND THE	*	
STATE OF LOUISIANA	*	
THROUGH CHARLES FOTI,	*	
ATTORNEY GENERAL FOR	* * * * *	
THE STATE OF LOUISIANA		
IN HIS OFFICIAL CAPACITY		

CANNIZZARO, J., CONCURS IN THE RESULT AND ASSIGNS REASONS

I concur in the majority opinion to affirm the judgment of the trial court.

Mr. Jacobs’ petition for declaratory judgment was still pending in the district court when, on August 18, 2005, the New Orleans City Council passed Ordinance No. 22052, which amended the city’s Comprehensive Zoning Ordinance (“CZO”) to allow slot machines as an “accessory use” to the principal use of horse racing at the Fair Grounds Race Course, and Ordinance No. 22053, which granted Churchill Downs a conditional use permit to allow the construction of a building to house a slot machine facility. Pursuant to § 16.9.9.5 of the CZO, Mr. Jacobs and/or any other interested party had fifteen days from that date to file a suit to challenge the adoption of the two ordinances. Because neither Mr. Jacobs nor any other party timely challenged the City Council’s action, the two ordinances became effective. Once that occurred, the trial court could no longer grant Mr. Jacobs the declaratory relief he sought because slot machines were now an authorized “accessory use” to the principle use of horse racing at the Fair Grounds Race Course under the CZO and Churchill Downs was permitted to construct a facility to house and operate the machines. Further, in light of Mr. Jacobs’ failure to amend his petition for declaratory judgment or to timely file a separate pleading in the district court to

assert a constitutional challenge to the Racetrack Gaming Act, La. R.S. 27:351 *et seq.*, the trial court had no basis to declare any part of the act unconstitutional. Thus, the trial court did not err in dismissing Mr. Jacobs' petition for declaratory judgment and granting Churchill Downs' motion for summary judgment as a matter of law. In arriving at this conclusion, I believe the three assignments of error raised by Mr. Jacobs in his appeal brief have been addressed.