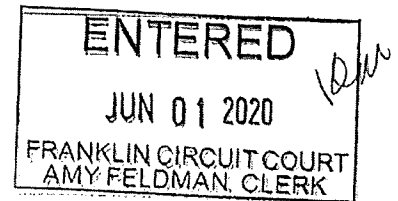


COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II

CIVIL ACTION No. 20-CI-00396



KENTUCKY HORSEMEN'S BENEVOLENT
& PROTECTIVE ASSOCIATION

PLAINTIFF

vs.

KEENELAND ASSOCIATION, INC.;
CHURCHILL DOWNS, INCORPORATED; and
KENTUCKY HORSE RACING COMMISSION

DEFENDANTS

ORDER

This matter is before the Court on Plaintiff's *Motion for Temporary Injunction*; Defendants' *Motion to Dismiss for Lack of Standing*; the Jockey Club's *Motion for Leave to File Amicus Brief*; Breeders' Cup Limited's *Motion for Leave to File Amicus Brief*; and the Kentucky Thoroughbred Association, Inc.'s *Motion for Leave to File Amicus Brief*. The case was called before the Court at a special hearing on Wednesday, May 27, 2020, at 10:00 a.m. All parties were represented by counsel. Upon review of the parties' briefs and papers, and being sufficiently advised, the Court hereby **DENIES** Plaintiff's *Motion for Temporary Injunction*; **GRANTS** Defendants' *Motion to Dismiss for Lack of Standing*; **GRANTS** the Jockey Club's *Motion for Leave to File Amicus Brief*; **GRANTS** Breeders' Cup Limited's *Motion for Leave to File Amicus Brief*; and **GRANTS** the Kentucky Thoroughbred Association, Inc.'s *Motion for Leave to File Amicus Brief*.

FACTS

Plaintiff, the Kentucky Horsemen's Benevolent & Protective Association ("KHBPA") is a Kentucky non-profit association consisting of Thoroughbred owners and

trainers. Defendants, Keeneland Association, Inc. (“Keeneland”) and Churchill Downs, Inc. (“Churchill”) are Kentucky corporations that conduct Thoroughbred racing at their respective tracks. Defendant, the Kentucky Horse Racing Commission (“KHRC”) is the administrative agency charged with enacting and overseeing regulations related to Thoroughbred racing in the Commonwealth. The Jockey Club, Breeders’ Cup Limited (“Breeders’ Cup”), and the Kentucky Thoroughbred Association, Inc. (“KTA”) are interested parties that each filed an amicus brief in support of Defendants.

The KHBPA filed the present action challenging Keeneland and Churchill’s recent ban on the use of the medication furosemide (“Lasix”) on race day in races involving two (2) year old horses. It is the KHBPA’s position that Keeneland and Churchill’s Lasix ban is a private ban of an approved medication commonly used for decades on race day at tracks in the Commonwealth, and in contradiction of the KHRC’s exclusive authority to issue such a ban. The KHBPA asks the Court to award injunctive relief, specifically an injunction prohibiting Defendants from barring the use of Lasix on race day for two (2) year old horses. Defendants collectively responded asserting that the KHBPA fails to allege an injury to itself and its members, and the KHBPA cannot satisfy the requirements for associational standing. Further, Defendants reason that even if the KHBPA had standing it is not entitled to injunctive relief.

It must be emphasized that the Court is not determining whether Lasix should be provided on race day to horses. Ethical and medical debates on the administration of Lasix on race day to Thoroughbreds are beyond the scope of this litigation. Instead, the Court is solely focused on its task of interpreting the relevant law to ensure that the actions of Defendants do not exceed the permissible bounds. Today, for the following reasons, the

Court holds that the KHBPA does not have associational standing and has failed to satisfy all the requirements for obtaining injunctive relief under *Maupin v. Stansbury*, 575 S.W.2d 695 (Ky. Ct. App. 1978).

ANALYSIS

I. Furosemide (“Lasix”)

Furosemide, commonly known as “Lasix,” is “an anti-bleeding medication, [] used by veterinarians in horse racing to prevent respiratory bleeding in horses running at high speed.” (Rana L. Cash and Gentry Estes, *What you need to know about the use of Lasix in horseracing*, COURIER JOURNAL, April 18, 2019). The drug is typically administered on race day, around four (4) hours before a race. *Id.* Internationally, all major racing jurisdictions bar the use of Lasix on race days with the United States as the sole outlier. However, major tracks within the United States have taken proactive measures to eliminate the use of Lasix on race days, including tracks in New York, Florida, and California. The movement to phase out and eventually eliminate the use of Lasix on race day is not recent; rather the effort began in 2014. (*See generally* Daniel Ross, *Lasix: the drug debate which is bleeding US horse racing dry*, THE GUARDIAN, August 31, 2014).

As of 2015, the KHRC has two (2) regulations addressing the administration of Lasix. First, under 810 KAR 8:010(6) a horse can receive Lasix four (4) hours before a race. Second, under 810 KAR 8:050 a track can to select the International Medication Protocol as a condition placed on a race and bar the administration of Lasix in all nominated or entered horses twenty-four (24) hours prior to the race. 810 KAR 8:050, Section 1. The regulation specifically states that “an association *may* require adherence to the International Medication Protocol as a condition of a particular race,” given that the association publish

the requirement in its condition book or “otherwise make the requirement known to all licensees participating in its race meeting.” *Id.* at Section 2. By adopting both regulations, the KHRC contends it set forth clear rules for governing races with or without race day Lasix, and the associations are merely allowed to select the timeframe they want the KHRC to enforce for a race.

The debate of whether Lasix is a legitimate treatment for a common condition in horses or a performance-enhancing drug designed to drop water weight in horses prior to a race, continues in the horseracing industry. Though no scientific link between race day administration of Lasix and incapacity to horses has been found, rampant media attention surrounding the nearly two (2) dozen horses devastatingly euthanized in a short span of time at Santa Anita Park in 2019 caused the track to quickly issue changes in the amount of Lasix permitted to be issued on race day. (Nathan Fenno, *Another horse death forces Santa Anita to take drastic steps*, LOS ANGELES TIMES, March 14, 2019). Weeks later Santa Anita Park was announced as part of the coalition of racetracks planning to phase-out Lasix in stakes races by 2021. (John Cherwa, *Major horse racing tracks agree to phase out use of race-day Lasix*, LOS ANGELES TIMES, April 18, 2019).

In response to the years-long debate concerning the race-day use of Lasix, on April 18, 2019, Keeneland and Churchill publicly joined other major racing tracks in the United States, including Santa Anita Park, in an initiative to eliminate the use of Lasix on race day in two (2) year old horses and phase out the use of race day Lasix in all horses in stakes races, including the Triple Crown races. *Id.* That same day, Churchill issued a press release stating its intention to run the 2021 Kentucky Derby without the administration of Lasix on race day. (News Release, Churchill Downs, *Churchill Downs Emphasizes Safety Ahead*

of 2019 Kentucky Derby, April 18, 2019). Ahead of the originally scheduled 2020 Spring meets, Keeneland and Churchill released their respective condition books upholding the April 2019 public announcement to eliminate race day use of Lasix in two (2) year old horses. In May 2020, Churchill has conducted a handful of Lasix-free two (2) year old races.

II. Injunctive Relief

Under CR 65.04, the Court may grant a temporary injunction where it is clearly shown that the applicant's rights are being or will be violated by the adverse party and the applicant will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action. Injunctions should only be granted if the applicant can show irreparable injury, if the equities involved are best served by granting the injunction and when the applicant has shown that a substantial question on the merits is presented. The landmark case in Kentucky on injunctive relief is *Maupin v. Stansbury*, 575 S.W.2d 695 (Ky. Ct. App. 1978). In *Bingo Palace v. Lackey*, 310 S.W.3d 215, 216 (Ky. 2009), the Supreme Court of Kentucky discussed the standard for granting injunctive relief established by the Court of Appeals in *Maupin*:

In *Maupin*, the Court of Appeals stated: "Because the injunction is an extraordinary remedy, sufficiency of the evidence below must be evaluated in light of both substantive and equitable principles." *Maupin*, 575 S.W.2d at 697. CR 65.04 authorizes the granting of a temporary injunction (interlocutory relief) if the movant's rights are being violated and the movant will suffer immediate and irreparable injury pending a final judgment, or if waiting would render the final judgment meaningless. According to *Maupin*, "In order to show harm to his rights, a party must first allege possible abrogation of a concrete personal right." *Id.* at 698 (citing *Morrow v. City of Louisville*, 249 S.W.2d 721 (Ky. 1952)). "[D]oubtful cases should await trial of the merits." *Id.* (citing *Oscar Ewing, Inc. v. Melton*, 309 S.W.2d 760 (Ky. 1958)). And further, there must be "a clear showing that these rights will be immediately impaired." *Id.*

Pursuant to the *Maupin* standard, a party is not required to show success on the merits of a claim in order to be entitled to relief under CR 65.04. Rather, the balance-of-the-hardships test applies: “if the complaint shows a probability of irreparable injury and the equities are in favor of issuance, it is sufficient if the complaint raises a serious question warranting a trial on the merits.” *Maupin*, 575 S.W.2d at 699 (internal citations omitted). In weighing the equities, the Court should consider such things as “possible detriment to the public interest, harm to the defendant, and whether the injunction will merely preserve the status quo.” *Id.* The overall merits of the case are not to be considered in CR 65.04 motions for temporary injunctive relief. “An injunction will not be granted on the ground merely of an anticipated danger or an apprehension of it, but there must be a reasonable probability that injury will be done if no injunction is granted.” *Hamlin v. Durham*, 32 S.W. 2d 413, 414 (Ky. Ct. App. 1930).

Moreover, the rule in Kentucky is well-settled that “the extraordinary remedy of injunction will not be granted for the protection of alleged rights, where the litigant seeking the injunction has an adequate remedy at law.” *Heyser v. Brown*, 184 S.W.2d 893, 894 (Ky. 1945) citing *Commercial Credit Co., Inc., v. Martin, etc.*, 122 S.W.2d 135 (Ky. 1938); *Gregory et al. v. Crain*, 163 S.W.2d 289 (Ky. 1942). “[M]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough.” *Norsworthy v. Kentucky Bd. of Medical Licensure*, 330 S.W.3d 58, 62 (Ky. 2009) (quoting *Sampson v. Murray*, 415 U.S. 61, 90 (1974) (quoting *Virginia Petroleum Jobbers Ass'n v. Federal Power*, 259 F.2d 921, 925 (D.C.Cir. 1958))).

i. Substantial Question

The first element of *Maupin* requires the KHBPA to present a substantial question on the merits. To present a substantial question on the merits, a party must plead a case in which a substantial possibility exists that it will prevail on the merits. *Norsworthy*, 330 S.W.3d at 63. The Court must emphasize that when assessing whether a party is entitled to injunctive relief for presenting a substantial question on the merits, the Court does not reach the actual merits of the case.

The KHBPA argues that it undeniably presents a substantial question on the merits, centering its position on a 2015 Attorney General Opinion, OAG 15-17, requested by the KHBPA's executive director, Martin Maline. In the opinion, then Attorney General Jack Conway, advised that the KHRC is not permitted to delegate to private associations, such as Keeneland and Churchill, the ability to determine whether a race should be Lasix-free. Instead, the Attorney General opined that the KHRC's regulation regarding the International Medication Protocol, presently 810 KAR 8:050, impermissibly delegates the agency's discretionary power to individual associations. The Attorney General stated this discretionary function is committed by statute to the KHRC.

On the outset Defendants state that OAGs do not have the force of law, and that the 2015 OAG relies on inapplicable legal authority and was not published in accordance with KRS Chapter 15. Moreover, Defendants reason that the KHRC has created a regulatory scheme for governing races with or without race day Lasix, and the tracks simply choose which of the two (2) timeframes to use for a particular race. Thus, Defendants maintain that 810 KAR 8:050 is not an impermissible delegation of the KHRC's authority.

The Court understands that the KHBPA is challenging the legality of 810 KAR 8:050 and whether it is an impermissible delegation of authority by the KHRC. However, the Court finds that the KHBPA is not entitled to injunctive relief merely because it is challenging the legality of a regulation, a regulation that has been in existence for half a decade. Thus, the Court agrees with Defendants that the KHBPA fails to present a substantial question on the merits.

The 2015 AG Opinion characterizes the regulation, presently 810 KAR 8:050, as vesting discretionary power belonging to the KHRC in individual associations. However, for the following reasons, the Court agrees with Defendants that the 2015 AG Opinion mischaracterizes the actual delegation, and that in 810 KAR 8:050 the KHRC outlines the standards and principals for allowing individual associations to elect the International Medication Protocol as a condition of a race.

The KHRC has created a regulatory scheme outlining two (2) options under which Lasix can be administered to horses. 810 KAR 8:050 states that an association *may* require adherence to the International Medication Protocol. If the association does not make such an election, then the default regulatory scheme found in 810 KAR 8:010(6), which allows the administration of Lasix four (4) hours prior to a race, controls. Associations are only allowed to elect whether a particular race shall adhere to the International Medication Protocol outlined in 810 KAR 8:050. The associations involvement ends there. The regulatory scheme prescribed by the KHRC sets the rules for all races. The associations are not involved. The KHRC retains authority to enforce the condition and violations of the condition.

ii. Irreparable Injury

The second prong of *Maupin* requires the KHBPA to show that its rights will be irreparably harmed absent an injunction. The KHBPA alleges that without Court intervention its members will not be able to race their horses at Keeneland or Churchill this year or will be forced to take on the heavy financial burden of moving their vulnerable horses out of state to compete in jurisdictions that permit race day administration of Lasix. The KHBPA admits that the KHRC has considered banning the use of Lasix on race day in certain age groups or generally phasing out the use of Lasix in all Thoroughbreds on race day, however, the KHBPA stresses the exclusive authority of the KHRC over medication rules and regulations due to the complex and competing issues over these rules and regulations.

Defendants reason that the KHBPA's claims of irreparable injury are speculative and at best may result in economic harm. Defendants ask the Court to note that Keeneland and Churchill publicly announced in April of 2019 their intent to conduct Lasix-free races in 2020 and published their condition books earlier this year. Thus, Defendants argue that the KHBPA cannot suddenly allege, notably after Churchill has successfully held multiple Lasix-free races, irreparable and immediate harm when, for over a year, its members were aware of Defendants' plan.

The Court agrees with Defendants. "[M]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough." *Norsworthy*, 330 S.W.3d at 62 (quoting *Sampson*, 415 U.S. at 90). Injunctive relief is an extraordinary measure that is only appropriate when another remedy is not adequately available to the requesting party. *Heyser*, 184 S.W.2d at 894. Here, the KHBPA alleges

potential economic harm. While members of the KHBPA may actually accumulate a substantial financial injury, Kentucky courts have consistently held that economic injuries are reparable.

Additionally, the KHBPA asserts potential harm to unidentified vulnerable horses if they are forced to race without Lasix on race day. “An injunction will not be granted on the ground merely of an anticipated danger or an apprehension of it, but there must be a reasonable probability that injury will be done if no injunction is granted.” *Hamlin v. Durham*, 32 S.W.2d 413, 414 (Ky. 1930). The Court finds that this alleged harm is speculative, and would result in economic loss, which is reparable. Anyway, the Court takes judicial notice that Keeneland and Churchill announced their intentions to hold Lasix-free two (2) year old races in 2020 over a year ago, and Churchill has successfully held multiple Lasix-free races during its current meet. Therefore, the Court finds that the KHBPA fails to allege that without an injunction its rights will be immediately and irreparably harmed.

ii. Status Quo

Finally, *Maupin* requires the KHBPA to demonstrate that in weighing the equities, injunctive relief will merely maintain the status quo. In weighing the equities, the Court should consider such things as “possible detriment to the public interest, harm to the defendant, and whether the injunction will merely preserve the status quo.” *Maupin*, 575 S.W.2d at 699. The KHBPA contends administering Lasix on race day is the long-standing status quo in horse racing in the United States. Defendants disagree and assert that Lasix-free races are the present status quo internationally and in the United States. The three (3) amicus briefs filed by the Jockey Club, the KTA, and Breeders’ Cup support Defendants’

position. First, the Jockey Club emphasizes that the actions of Keeneland and Churchill, to card Lasix-free races for two (2) year old horses, are aligned with leading international racing rules and standards; a move the Jockey Club states is trending rapidly throughout all major tracks in the United States. The KTA provides that industry recommendations and the public expectation for the health and safety of horses support carding Lasix-free races for two (2) year old horses. Breeders' Cup notes the proactive measures throughout the United States to eliminate the use of Lasix on race day and its intent to run the Breeders' Cup at Keeneland in November Lasix-free. Collectively, Defendants, the KTA, the Jockey Club, and Breeders' Cup argue that Kentucky must continue to be the industry leader and not succumb to former outdated standards.

The Court understands Defendants' stance that Lasix-free racing is the present status quo for two (2) year old horse racing internationally and at major tracks in the United States. Previous widespread use of Lasix on race day does not mean its use remains the status quo. In April of 2019, Keeneland and Churchill publicly announced their intention to eliminate race day use of Lasix in two (2) year old horses. Owners, trainers, and horses have spent the previous year planning for Lasix-free races. Ultimately, the Court agrees with Defendants that injunctive relief would cause detriment to the public interest, harm Defendants, and not maintain the status quo.

In assessing entitlement to injunctive relief, courts do not need to reach the merits of an action. The pleadings in this action demonstrate differing opinions of the legality of 810 KAR 8:050. Today, the KHBPA has failed to sufficiently satisfy the requirements for obtaining injunctive relief under *Maupin*. Not only are monetary damages an adequate remedy, but the KHBPA has failed to present a substantial question on the merits, cannot

show that injunctive relief will maintain the status quo, and that without injunctive relief the KHBPA will suffer immediate and irreparable injury. Therefore, the Court must **DENY** the KHBPA's request for injunctive relief.

III. Standing

Defendants raise the issue of standing and argue that the KHBPA does not and cannot allege that the regulation, 810 KAR 8:050, causes injury to itself or its members. Thus, Defendants believe this Court lacks subject matter jurisdiction to decide the KHBPA's claims and reasons that the Court must dismiss this matter for the KHBPA's lack of standing.

i. Motion to Dismiss Standard

Under Kentucky law, when a court considers a motion to dismiss under Civil Rule 12.02, "the pleadings should be liberally construed in a light most favorable to the plaintiff and all allegations taken in the complaint to be true." *Gall v. Scroggy*, 725 S.W.2d 867, 869 (Ky. Ct. App. 1987) citing *Ewell v. Central City*, 340 S.W.2d 479 (Ky. 1960). "The court should not grant the motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim." *Mims v. W.-S. Agency, Inc.*, 226 S.W.3d 833, 835 (Ky. Ct. App. 2007) quoting *James v. Wilson*, 95 S.W.3d 875, 883-84 (Ky. Ct. App. 2002). In *D.F. Bailey, Inc. v. GRW Engineers Inc.*, 350 S.W.3d 818 (Ky. Ct. App. 2011), the Kentucky Court of Appeals discussed a trial court's standard of review when ruling on a motion to dismiss. "[T]he question is purely a matter of law. [...] Further, it is true that in reviewing a motion to dismiss, the trial court is not required to make any factual findings, and it may properly consider matters outside of the pleadings in making its decision. *Id.* at 820 (internal citations omitted).

ii. Injury

The Kentucky Supreme Court concluded that “the existence of a plaintiff’s standing is a constitutional requirement to prosecute any action in the courts of this Commonwealth,” and it formally adopted the *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) test for standing. *Commonwealth, Cabinet for Health and Family Services, Department for Medicaid Services v. Sexton*, 566 S.W.3d 185, 188 (Ky. 2018). Under the *Lujan* test, the plaintiff must have suffered an “injury in fact” which he or she can causally connect to the conduct at issue. *Lujan*, 504 U.S. at 560–61. The injury must be “concrete and particularized” and “either actual or imminent.” *Sexton*, 566 S.W.3d at 196 (quoting *Massachusetts v. E.P.A.*, 549 U.S. 497, 517 (2007)). In sum, the *Sexton* Court clarified that “for a party to sue in Kentucky, the initiating party must have the requisite constitutional standing to do so, defined by three requirements: (1) injury, (2) causation, and (3) redressability.” *Id.*

Applying this test, the Kentucky Supreme Court found that the plaintiff in *Sexton* lacked a concrete injury and, as a result, lacked constitutional standing. *Sexton*, a Medicaid beneficiary, sought medical treatment at a hospital, but the relevant managed-care organization would not preauthorize certain services. Due to the life-threatening nature of *Sexton*’s condition, the hospital proceeded with the medical treatment, and the managed-care organization then denied reimbursement. The hospital acted as *Sexton*’s representative to ultimately seek a hearing before the Cabinet and when denied a Medicaid Fair Hearing, sought relief in circuit court. On appeal, the Kentucky Supreme Court characterized *Sexton* as “the true plaintiff” in the suit and found that *Sexton* had not been “injured” for purposes

of standing.¹ The Kentucky Supreme Court noted that Sexton received the medical treatment that she sought and needed. The hospital, not Sexton, sought reimbursement for those services, and Sexton therefore also lacked a financial interest in the dispute. Thus, the “true injuries” in the case involved losses suffered by the hospital, namely, unreimbursed medical expenses. *Id.* at 198. The remedy—reimbursement—would make the hospital whole but would have no effect on Sexton. In other words, regardless of the outcome of the case, “Sexton would be no better or worse off.” *Id.* The Court therefore found that Sexton lacked the particularized injury necessary to establish standing.

Here, the injury alleged is a private race-day ban by Keeneland and Churchill on the administration of Lasix, which the KHBPA argues interferes with the ability of horsemen and horsewomen, members of the KHBPA, to earn a living or race their two (2) year old horses in the Commonwealth. Defendants classify the alleged injury as speculative and state that no owner or trainer has added his or her name to this lawsuit. Wherefore, the Defendants are entitled to dismissal.

iii. Associational Standing

To assert associational standing, the KHBPA must satisfy a three (3) prong test: (1) its members would otherwise have standing to sue in their own right; (2) the interest it seeks to protect are germane to the organization’s purpose; and (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the lawsuit. *Commonwealth, ex. rel. Brown v. Interactive Media Entertainment and Gaming Association*, 306 S.W.3d 32, 38 (Ky. 2010).

¹ As a Medicaid recipient, Sexton was not subject to any type of suit by the hospital for services rendered.

With this standard in mind, the Court finds that the KHBPA does not have standing. The Complaint vaguely identifies “members” of the KHBPA that are owners and trainers as affected parties, but absent from the Complaint is the name of a single owner or trainer claiming to be adversely affected by Keeneland and Churchill’s election of 810 KAR 8:050. The KHBPA is merely required to show that “it represent[s] at least one member with an injury in order to obtain relief,” but the Court finds that the KHBPA cannot satisfy this simple requirement. *Id.* at 40 (citing *Sierra Club v. SCM Corp.*, 747 F.2d 99, 102 (2nd Cir. 1984)). In support of its position, the KHBPA tendered two (2) affidavits. The first affidavit of Rick Hiles, President of the KHBPA, offers Mr. Hiles’ concern that racing horses without Lasix may create a safety issue for jockeys and horses. The second affidavit of Martin Maline, Executive Director of the KHBPA, states that the KHBPA is a trade association representing the interests of its 5,150 members that are owners and trainers. Absent from either affidavit is an alleged injury to a member of the KHBPA.

In *City of Ashland v. Ashland F.O.P No. 3*, 888 S.W.2d 667, 668 (Ky. 1994), the Kentucky Supreme Court found that the Fraternal Order of Police (“F.O.P”) had standing to challenge a city ordinance because its members—the police—had a “real and substantial interest” in striking the ordinance. Standing was awarded only because it was stipulated that the F.O.P. “represented the majority of city police.” *Id.* Unlike the F.O.P., it cannot be said that the KHBPA represents the majority of owners and trainers, nor have the parties stipulated about the KHBPA’s membership. While the affidavit of Mr. Maline confirms that the KHBPA has a large membership, amicus briefs submitted by the KTA and the Jockey Club, raise the issue of whether the KHBPA actually represents the position of the majority of owners and trainers. Confusingly, the KHBPA claims to have a membership of

5,150 owners and trainers, yet the KHBPA brings this action without identifying one affected member.

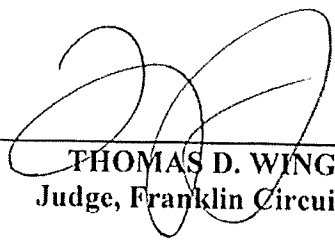
The KHBPA has failed to disclose one (1) member it represents that is injured by Defendants' actions. The Court cannot simply accept the KHBPA's vague assertion that it represents at least one (1) injured member. It is the burden of the KHBPA to demonstrate that it satisfies the requirements of associational standing, which first requires the KHBPA to prove that its members would have standing themselves. The KHBPA's failure to identify any single affected member forfeits its claim of associational standing and any potential for success of the merits.

After consideration of the parties' arguments, the Court finds that the KHBPA has failed to set forth some actual or imminent injury to at least one (1) individual member. The Complaint fails to contain a single allegation that a member of the KHBPA was unable to run a horse due to Churchill and Keeneland electing to adopt 810 KAR 8:050 as a condition for two (2) year old races. The Court understands the quick timeframe of this action; however, this action was brought by the KHBPA and once Defendants raised the issue of standing, the KHBPA failed to adequately cure the issue. Because the KHBPA cannot meet the first prong of the test for associational standing, the Court does not need to consider whether the interest that the KHBPA seeks to protect is germane to the organization's purpose and whether the claim asserted or the relief requested requires the participation of the individual members in the lawsuit. For the foregoing reasons the Court must **DISMISS** this action because consideration of the merits is improper due to the KHBPA's lack of standing. Failure to establish standing in this action does not foreclose future litigation. If a party can properly establish standing, this action can be re-filed.

WHEREFORE, Plaintiff, the Kentucky Horsemen's Benevolent & Protective Association's *Motion for a Temporary Injunction* is **DENIED**; Defendants' *Motion to Dismiss for Lack of Standing* is **GRANTED**; the Jockey Club's *Motion for Leave to File Amicus Brief* is **GRANTED**; Breeders' Cup Limited's *Motion for Leave to File Amicus Brief* is **GRANTED**; and the Kentucky Thoroughbred Association, Inc.'s *Motion for Leave to File Amicus Brief* is **GRANTED**.

This order is final and appealable and there is no just cause for delay.

SO ORDERED, this 1st day of June, 2020.



THOMAS D. WINGATE
Judge, Franklin Circuit Court

CERTIFICATE OF SERVICE

18 I hereby certify that a true and correct copy of the foregoing Order was mailed, this day of June, 2020, to the following:

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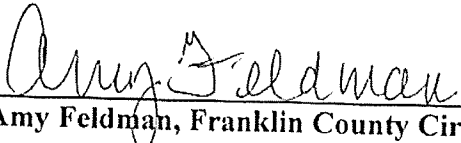

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