

Daniel W. Walker
dwalker@preti.com

March 8, 2023

Sen. Craig Hickman
Rep. Laura Supica
Joint Standing Committee on Veterans and
Legal Affairs
State House, Room 437
Augusta, Maine, 04333

**RE: Testimony of Churchill Downs in Support of LD 731, An Act Regarding the
Licensing of Persons to Conduct Advance Deposit Wagering**

Senator Hickman, Representative Supica, and Members of the Joint Standing Committee on
Veterans and Legal Affairs,

My name is Daniel Walker, with PretiFlaherty, and I provide testimony in support of LD 731 on
behalf of my client, Churchill Downs Incorporated (CDI).

As you know, Churchill Downs is the parent company of Oxford Casino, which employs over
400 Mainers, the vast majority with full benefits (down from pre-pandemic employment of over
500), with estimated Gaming taxes paid (state and local) of over \$38.5M. Churchill Downs and
Oxford Casino proudly contribute to the economy of both the local community and the state
overall. Today, I would like to testify with regards to LD 731 and how it relates to their other
business, TwinSpires.com.

TwinSpires is the largest advance deposit wagering (ADW) operator in the United States. It
operates in 40 states and over 80% of TwinSpires' customers do not regularly wager at
racetracks or off-track betting facilities, meaning that TwinSpires is bringing an entirely new
group of customers to the sport.

ADW operators are permitted to accept interstate wagers under Federal law, namely the
Interstate Horseracing Act, or the IHA. 15 U.S.C §§ 3001-3007. The IHA's purpose is to
regulate interstate commerce with respect to wagering on horseracing, in order to further the
horseracing and legal off-track betting industries in the United States. Maine passed a law in
2016, limiting Maine to only one ADW provider and then finally implemented the law in 2020,
awarding the ADW business in Maine to Penn National.

If LD 731 were to pass, TwinSpires would promote Maine horse racing across the country by
allowing residents of other states to place online wagers on Maine races. Maine residents used to
be able to place bets on this platform on races around the country, such as the Kentucky Derby.
Churchill Downs and TwinSpires wish to resume operating in Maine by participating in an open
ADW market.

PRETI FLAHERTY

March 8, 2023

Page 2

We have worked with the bill sponsor, Senator Farrin, in an effort to revise the existing program that limits the market to only one ADW provider. Under this newly proposed structure in LD 731, multiple providers could apply for licenses. Competition is crucial. Multiple providers will lead to customers getting the best possible product without concerns that come from a single provider model, such as technical issues on a big race day. An open market would also result in significantly more revenue for the State and various stakeholders in the distribution structure. The more variety you have, the more customers you will have, which will lead to more revenue for the State.

We have proposed to continue the 5% tax rate on wagers placed in Maine. There are few states that tax ADW operations and this rate is at the high end of those that do. Given that this higher tax rate would apply to all ADW market participants, it is sure to generate significantly more state tax revenue than the single operator model.

We understand that there may be a concern that the State should not be “breaking” its contract with Penn National (the current ADW provider), which expires in Spring of 2025. However, I have attached to my testimony language from the Gambling Control Board ADW RFP (#201908135) Award Justification Statement issued to Penn National, which makes it clear that Penn should not be surprised nor have any legal action if there is a law change allowing for more licenses. See p.2 <https://www.maine.gov/tools/whatsnew/attach.php?id=1579306&an=5>

The RFP Award Justification states:

In the event the law changes to allow multiple advance deposit wagering licenses, the successful bidder’s exclusive advance deposit wagering license will revert to an ordinary, non-exclusive license provided that the successful bidder first complies with any new licensing and suitability requirements under the new law. In addition, in the event the law changes to allow multiple licenses, the Board will have the right to terminate any contract resulting from this Request for Proposals

CDI and TwinSpires wish to operate in Maine and further contribute to the state’s overall racing industry. We respectfully request an open licensure process and a predictable tax rate of 5% to ensure that we can participate in a profitable and sustainable way.

Thank you for your consideration.

Sincerely,

Daniel W. Walker

TVG Blames Third-Party Service Provider For Derby Day Crash

 paulickreport.com/horseplayers-category/tvg-blames-third-party-service-provider-for-derby-day-crash/

by Paulick Report Staff

May 9, 2022



 **CATALINA CRUISER** Union Regg - Sea Gull by Minskoff **FIRST TWO-YEAR-OLDS THIS YEAR**
20 CATALOGUED AT OBS MARCH  **LANE'S END**

Churchill Downs Inc. reported record wagering on the 14-race Kentucky Derby day program on May 7, but the total handle of \$273.8 million would have been even higher were it not for a major technical failure of the TVG advance deposit wagering platform.

Sometime between 3-4 p.m. ET, TVG customers using the company's app starting getting "bad connection" messages or account balances falsely displaying zero dollars for wagering. Horseplayers took to social media for the next several hours complaining they were unable to bet with the app or the TVG website.

The crash was reminiscent of a Kentucky Derby day outage in 2016 when TVG apologized to account holders, citing human error for the failure, and stating "this won't happen again."

On Monday, May 9, TVG issued the following statement on Saturday's crash:

"We understand and appreciate that the service interruptions we experienced Saturday were frustrating to many of our valued customers and we will be communicating directly with those affected customers over the course of the coming days. TVG takes seriously its place within the racing community and the responsibility it has to deliver the very best fan experience. The issues our app incurred on Saturday did not meet those expectations. We have identified the cause, a technical issue related to a third-party service provider, and are actively making changes to our platform to ensure better performance moving forward."

TVG and TwinSpires are the industry's two biggest volume advance deposit wagering companies. Churchill Downs Inc., which owns TwinSpires, said it handled \$67.4 million on Derby day races at the Louisville, Ky., track. It isn't known how much TVG handled on the Derby day card. Kentucky Derby day is American racing's biggest betting day annually.

TVG is part of the FanDuel Group, the leading sports betting company in the U.S., owned by Irish-based Flutter Entertainment.

Award Justification Statement
RFP# 201908135 Advance Deposit Wagering

I. Summary

The Maine Gambling Control Board (Board) is seeking proposals to provide Advance Deposit Wagering as defined in this Request for Proposals (RFP) document, awarding one bidder the privilege to be licensed to conduct advance deposit wagering. The Board, established as part of the Department of Public Safety pursuant to 8 M.R.S. § 1002(1) <http://legislature.maine.gov/legis/statutes/8/title8sec1002.html>, is issuing this RFP to invite advance deposit wagering vendors to submit proposals for the operation of advance deposit wagering in the State of Maine. Bidders must propose the method by which they will conduct advance deposit wagering that provides the maximum benefit to the harness racing industry and the State in a manner that ensures wagering is conducted by residents of the State who are verified to be 18 years of age or older.

In the event the law changes to allow multiple advance deposit wagering licenses, the successful bidder's exclusive advance deposit wagering license will revert to an ordinary, non-exclusive license provided that the successful bidder first complies with any new licensing and suitability requirements under the new law. In addition, in the event the law changes to allow multiple licenses, the Board will have the right to terminate any contract resulting from this Request for Proposals.

- The financial suitability of the Bidder to operate advance deposit wagering, including purchase of a bond to secure the accounts of advance deposit wagering bettors;
- The extent to which the Bidder's proposal to conduct advance deposit wagering will benefit the harness racing industry in the State and the General Fund;
- The percentage of wagers the Bidder proposes to pay to the Board to cover the costs of the Board for administration and oversight of advance deposit wagering and to make distributions required under 8 M.R.S. § 1072;
- The likelihood that the Bidder will meet the requirements for licensure to conduct advance deposit wagering as prescribed by the rules of the Board; and

II. Evaluation Process

An Evaluation Team comprised of State employees and a Gambling Control Board member, applied the consensus method in scoring the Bidders Qualifications & Experience, and Proposed Services. Scores for the Cost Proposal were assigned using a predetermined formula. Below is a summary of the scoring: