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DID BOBBY JONES & AUGUSTA NATIONAL BLOCK THE PARI-MUTUEL GAMBLING BILL OF 1935? *

Preston Dunaway

*“There’s not the remotest chance . . . that pari-mutuels operate in connection with the second annual Masters’ Invitation”*¹

In the early 1900s, the Georgia legislature limited the scope of illegal gambling to games played with cards, dice, balls, or other table games.² In turn, law enforcement had little room to indict defendants for suspect gambling activities that fell outside the statute’s narrow scope.³ Instead, for a suspect activity that looked like gambling but fell outside the gambling statute, the state indicted the defendant under the statute against lotteries by alleging that he operated a “scheme or device for the hazarding of money.”⁴

In the 1907 case *Russell v. Equitable Loan & Security Co.*, the Supreme Court of Georgia noted that a lottery or other similar scheme consists of “(a) consideration, (b) chance, [and] (c) prize.”⁵ Specifically, *Russell* sought to answer the following legal question: “What is ‘chance’ as contemplated” under Georgia law?⁶ Understanding how Georgia courts define chance is essential to understanding gambling laws in Georgia. Games of chance that allow the player to win something of value are illegal—unless they are considered a lottery game that the Georgia Lottery Corporation may

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1. Tom Wall, *Who’ll Lay the Odds?*, AUGUSTA CHRON., Feb. 24, 1935, at 8.

2. *See* Hubbard v. State, 51 S.E. 11, 11–12 (Ga. 1905) (“An indictment under [the Code] may charge . . . that the defendant played and bet at a game played with cards, dice, and balls . . .”).

3. *See, e.g.*, Meyer v. State, 37 S.E. 96, 96 (Ga. 1900).

4. *See id.* (holding that the defendant operated a scheme or device for the hazarding of money by operating a nickel slot machine, reasoning that it was a game of chance given the operator bore the risk that the customer could receive a prize worth more than the nickel deposited).

5. 58 S.E. 881, 884 (Ga. 1907).

6. *Id.* at 885.

regulate.⁷ Games of skill that allow a player to win something of value—for example, a golf tournament—are legal, however.⁸

Accordingly, the *Russell* court defined chance by noting its plain meaning: “The International Dictionary gives the general definition of chance as ‘the unknown or undefined cause of events that to us are uncertain or *not subject to calculation . . .*’”⁹ As a result, the *Russell* court established a test to determine whether chance was present in a lottery or similar scheme.¹⁰ Under this test, when a person applies skill to win something of value, chance is not present.¹¹ In other words, under *Russell*, a game or contest that required skill—any skill—was not a game of chance and was not a lottery.¹²

Interestingly, the *Russell* decision seemed to open the door for the establishment of a pari-mutuel gambling industry given that the Supreme Court of Georgia noted that “betting on a horse race or *other contests of skill* cannot be considered a lottery [or other similar scheme].”¹³ Pari-mutuel wagering is most closely associated with horse racing and dog racing, but you could create a pari-mutuel betting pool on almost any event.¹⁴ It differs from fixed-odds wagering because “all [the] money paid into the system is paid out to the patrons [who place wagers] except for a small percentage retained by the state” and the facility that accepts the wagers.¹⁵ In other words, if you win a pari-mutuel bet, the money comes from the pool created by everyone

7. GA. CONST. art. I, § II, para. VIII(a); O.C.G.A. § 16-12-20(4) (2018 & Supp. 2020) (“‘Lottery’ means any scheme or procedure whereby one or more prizes are distributed by chance . . .”); O.C.G.A. § 50-27-9 (2013 & Supp. 2020) (granting the Georgia Lottery Corporation the authority to “initiate, supervise, and administer the operation of the lottery”).

8. § 16-12-20(1)(b).

9. *Russell*, 58 S.E. at 885 (emphasis added).

10. *Id.* (“Wherever it is sought to employ the element of chance in any kind of lottery or gambling scheme[,] show is made of an attempt to displace the exercise of human design, and employ in its stead some uncertain scheme or device, which, uninfluenced by any possible design of the parties, may, according to mere blind luck, designate a particular result.”).

11. *Id.*

12. *Id.*

13. *Id.* (emphasis added) (citing *People v. Reilly*, 15 N.W. 520, 522 (Mich. 1883)).

14. See generally Laura A. D’Angelo & Daniel I. Waxman, *No Contest? An Analysis of the Legality of Thoroughbred Handicapping Contests Under Conflicting State Law Regimes*, 1 KY. J. EQUINE AGRIC. & NAT. RES. L. 1 (explaining various state laws that regulate pari-mutuel wagering).

15. *Id.* at 8 n.56 (quoting *Oneida Cnty. Fair Bd. v. Smyle*, 386 P.2d 374, 376 (Idaho 1963)).

betting on the event, not the facility that accepts the bet. In fixed-odds, the money you win comes from the facility that accepts the bet.

Legislative interest to legalize pari-mutuels peaked in 1935.¹⁶ Despite waking up to newspaper articles like *Liquor, Horse Racing and Quick Divorces Submitted by Georgia's Legislators*, the public seemed to be willing to support, or at least accept, some form of legalized gambling as a means to solve some of the economic turmoil that the Great Depression had unleashed on the Georgia economy.¹⁷ As a result, a bill to legalize pari-mutuel betting passed the Georgia House on March 12, 1935.¹⁸ Yet, the next day the house nullified its decision, and the bill to legalize pari-mutuel betting died.¹⁹

So what caused the house's sudden overnight decision to change its stance on legalized pari-mutuel gambling? The official version is that a dispute between two representatives over the bill caused the house to suddenly change its mind.²⁰ However, something else may have doomed the bill: Bobby Jones, the President of Augusta National, was hosting the Second Annual Masters Invitational Tournament.²¹

From the start, legalized gambling advocates focused their efforts on educating residents in Augusta on the benefits of legalized

16. *Georgia House Passes Bill Legalizing Pari-Mutuel Betting in State*, AUGUSTA CHRON., Mar. 13, 1935, at 1 [hereinafter *House Passes Betting Bill*].

17. *Liquor, Horse Racing and Quick Divorces Submitted by Georgia's Legislators*, AUGUSTA CHRON., Jan. 18, 1935, at 1 (noting that a bill introduced by State Senator Homer Edenfeld of Kingsland, Georgia, proposed to legalize pari-mutuel betting for horse and dog races and would allow the state to collect a ten percent tax "of all the money handled" by pari-mutuels); see also *Florida Expects \$30,000,000 Fund from Bet Money*, AUGUSTA CHRON., Feb. 17, 1934, at 2 ("Times may still be hard in many places, prosperity still flitting one corner ahead, but for Miami in particular and the state of Florida in general, legalized betting has turned the depression tide.").

18. *House Passes Betting Bill*, supra note 16 (noting that the revenue from pari-mutuels would generate more than \$500,000 per year for the state based upon the three percent "take" that the state would keep for each dollar bet, which would then be used to fund pre-natal programs at hospitals throughout the state).

19. *Legislature*, AUGUSTA CHRON., Mar. 14, 1935, at 4 ("The house started off the day by nullifying its action of yesterday in passing the bill legalizing pari-mutuel betting on horse and dog racing in this state."); *Legislature*, AUGUSTA CHRON., Mar. 19, 1935, at 4 ("[T]he house defeated for the second time a bill to permit pari-mutuel betting on dog and horse races. The betting bill was beaten 76 to 76. A majority of 103 votes was necessary for passage.").

20. See Tom Wall, *A Sour Situation*, AUGUSTA CHRON., Mar. 21, 1935, at 8 ("Because a representative . . . became peeved with a fellow representative, the state of Georgia will have to forego pari-mutuels betting for at least two more years.").

21. Kenneth Gregory, *Jones Is Grooming New 'Calamity' Jane As He Prepares for Masters' Tourney*, AUGUSTA CHRON., Feb. 24, 1935, at 8.

gambling in Georgia.²² Augusta received such close attention from gaming advocates because leaders in Augusta, namely Bobby Jones, were seeking to “develop [Augusta] into the ideal winter resort” for northern visitors with deep pockets.²³

In February 1935, the legislature mulled over how to use legalized gambling to bring northern visitors to Georgia.²⁴ True to that, Bobby Jones spent his days in February contemplating how to bring visitors to Georgia. Yet, Jones’s dreams went beyond bringing snowbirds from the north to Georgia: he wanted to attract a prestigious, international crowd of golfers (and golf fans) to Augusta each year for the Masters.²⁵

During the time the legislature was in session, Bobby Jones “dropp[ed] his duties as a lawyer several afternoons a week” to play golf at the East Lake Country Club in Atlanta.²⁶ It is hard to imagine Jones did not rub shoulders with politicians and other political fixers on the course at East Lake during the time that the pari-mutuel bill was being debated only a few miles away at the Georgia State Capitol.

Back in 1935, the Masters was a “\$5,000 event” where the winner was awarded \$1,500 in prize money.²⁷ In today’s dollars, that is about \$100,000 in total prize money and \$29,000 for the winner.²⁸ With such a small prize pool, golfers may have been tempted to “throw in the fix.”²⁹ Thus, Jones may have (rightfully) believed that legalized

22. Tom Wall, *Give Us Pari-Mutuels*, AUGUSTA CHRON., Jan. 16, 1934, at 6 (noting that advocates for pari-mutuel horse racing held weekly information sessions to educate Georgians, particularly in Augusta, on the economic benefits that horse racing would bring by attracting northern visitors to Georgia during the winter).

23. *Id.* (“If Augusta is to move forward and develop into the ideal winter resort of this section, it is vitally necessary that something be done in the way of providing every possible sport for the entertainment of our northern visitors.”); *see also* Gregory, *supra* note 21 (“This course and the [Masters] tournament came about as the results of Jones’ efforts.”).

24. *See House Passes Betting Bill*, *supra* note 16.

25. Gregory, *supra* note 21; *see also Open King Plays Here*, AUGUSTA CHRON., Mar. 21, 1935, at 8 (“Olin Dutra, swarthy Long Beach, California, professional and the 1934 National open champion, yesterday notified Bobby Jones that he plans to participate in the second annual Masters’ Invitation tournament here April 4-5-6-7.”).

26. Gregory, *supra* note 21.

27. Wall, *supra* note 1 (“[N]early 150 outstanding golfers of the universe . . . will receive the following invitation to play in the classic \$5,000 event, the winner of which will be awarded \$1,500 prize money . . .”).

28. *CPI Inflation Calculator*, OFF. DATA, <https://www.officialdata.org/us/inflation/1935?amount=5000> [<https://perma.cc/6YSL-8WZ7>].

29. *See* Evan Andrews, *The Black Sox Baseball Scandal*, HISTORY,

gambling posed a threat to the integrity of the tournament. The Masters was only in its infancy in 1935, and Jones wrestled with how to grow the tournament's prestige. He invited several foreign golfers to the tournament, hoping to "give the tournament an international flavor."³⁰ But with the tournament being only two years old, Jones lamented that he did not "know whether any [would] accept."³¹

Though the record is muddled on exactly how much political clout Jones had regarding the specifics of the legislation, the record suggests that someone involved with the Masters was concerned about whether folks would be betting on the tournament. For example, Tom Wall, a sportswriter and pari-mutuel advocate, tried to assure readers in Augusta that there was "not the remotest chance . . . that pari-mutuels operate in connection with the second annual" Masters Invitational.³²

Now, the Masters is the most coveted prize in professional golf. At last year's tournament, the purse totaled eleven million dollars with Dustin Johnson securing the top prize of two million.³³ Johnson made nearly six million, not including endorsements, in 2020.³⁴ With those numbers, it looks like the risk of fixing the Masters is much lower now than it was in 1935.

For one week in April each year, Augusta, Georgia, is the most coveted tourist destination—if not the center of the universe—for sports fans around the world. So, in the end, both the Georgia legislature and Bobby Jones achieved what they wanted: a world class event that brings folks to Georgia.

Why does this matter today? The current Georgia Constitution bans all forms of pari-mutuel betting, casino gambling, and lotteries (except

<https://www.history.com/news/the-black-sox-baseball-scandal-95-years-ago> [https://perma.cc/6S63-V5QX] (Oct. 22, 2018) (describing how professional baseball players received \$100,000 from illegal bookmakers to purposely lose the 1919 World Series).

30. Gregory, *supra* note 21.

31. *Id.* ("Many foreign golfers, including Henry Cotton, the British star, have been asked to attend, but we do not know whether any will accept. It is hoped that several will be presented to give the tournament an international flavor.")

32. Wall, *supra* note 1; *see also* Wall, *supra* note 22.

33. Josh Behrow, *Masters Purse: Masters Payout Breakdown and Prize Money*, GOLF (Nov. 15, 2020), <https://golf.com/news/masters-purse-payout-breakdown-prize-money/> [https://perma.cc/Q8MX-34RZ].

34. *PGA Tour Money Leaders - 2020*, ESPN https://www.espn.com/golf/moneylist/_/year/2020 [https://perma.cc/WZ7N-8HM3].

lotteries regulated by the Georgia Lottery Corporation).³⁵ Thus, a constitutional amendment would be required to legalize pari-mutuels. But what about sports betting?

Legislation was proposed recently to define fixed-odds sports betting as a lottery game.³⁶ This presents a tough legal question: does sports betting amount to a lottery, casino gambling, or something else?

To answer this question, we need to know whether sports betting is a game of chance or a game of skill. Georgia law has moved on from *Russell*—now even the most skilled sports bettors are participating in a game of chance: “[T]he members of the baseball team . . . may be engaged in a contest of skill, but as to the spectators who wager upon the outcome,” they are, “under ou[r] statute, [engaging in] a game of chance.”³⁷ Thus, sports betting is a game of chance under Georgia law.

However, whether sports betting is a lottery or casino gambling presents an even tougher legal question. Of course, the legislature’s definition of the terms “lottery” and “casino gambling” provide guidance on how these terms should be interpreted.³⁸ Yet the Supreme Court of Georgia’s analysis would not end there; rather, it will look to the original public meaning of lotteries and casino gambling to decide where sports betting falls because “the Constitution, like every other instrument made by men, is to be construed in the sense in which it was understood by the makers of it at the time when they made it.”³⁹

The next article in this series, *Baseball Lotteries in Georgia: Braves Arrive in ‘66, so Did a Wave of Anti-Gambling Bills*, will seek to provide more clarity as to whether sports betting is a lottery or casino gambling by analyzing a baseball betting operation that was prosecuted under a Georgia anti-lottery statute and the anti-gambling

35. GA. CONST. art. I, § II, para. VIII(a).

36. *E.g.*, S.B. 142, 156th Gen. Assemb., Reg. Sess. (Ga. 2021) (proposing to regulate the online sports betting industry under the Georgia Lottery Corporation).

37. *Grant v. State*, 44 S.E.2d 513, 515 (Ga. Ct. App. 1947); *see also Sparks v. State*, 173 S.E. 216, 218 (Ga. Ct. App. 1934) (holding that games of chance may exist even when “skill or proficiency might enter into the operation”); O.C.G.A. § 16-12-20(1) (2018 & Supp. 2020).

38. The Georgia legislature has defined “casino gambling” as “a location or business for the purpose of conducting illegal gambling activities, but excluding the sale and purchase of lottery tickets or shares as authorized by this chapter.” O.C.G.A. § 50-27-3(7) (2013 & Supp. 2020).

39. *Elliot v. State*, 824 S.E.2d 265, 269 (Ga. 2019) (quoting *Padelford, Fay & Co. v. Mayor & Alderman of Savannah*, 14 Ga. 438, 454 (1854)).

legislation that followed Major League Baseball's arrival to Georgia in 1966.