



**BEFORE THE ECONOMIC DEVELOPMENT & POLICY COMMITTEE
OF THE NEW MEXICO LEGISLATURE**

Tuesday, November 29, 2022

“HORSE RACING IN NEW MEXICO-A CRITICAL JUNCTURE”

Presented by the New Mexico Horsemen’s Association

INTRODUCTION

Horse racing in New Mexico is at a critical juncture. The New Mexico Racing Commission has very clearly protected the five owners of the racinos to the detriment of horse racing, the owners and trainers of race horses, the vast majority of New Mexicans who depend on the industry for economic support, and the Compacts reached with indigenous New Mexicans. Detailed in this report are numerous incidents of that bias and the New Mexico Racing Commission’s retaliatory actions against the New Mexico Horsemen’s Association. The New Mexico Horsemen’s Association provides a chronology of events, sets forth the issues and provides solutions.

The New Mexico Horsemen’s Association

The Horsemen’s Association is a not for profit, benevolent, advocacy organization. It was formed in 1966, in the beginning, to help horsemen who had health issues and insufficient funds to get proper care, then to advocate for horsemen on issues before the New Mexico Racing Commission.¹ We have an elected state board and at each racetrack a local board who work to care for horsemen and to advocate for horsemen and advocate for horseracing. Every Racing Commission has listened to us, taken our input and recognized we have the best interests of horseracing in mind. That is, every racing commission until now.

Four thousand members and their families depend on us to fight to preserve horseracing and with all the people who depend on those members from farmers who raise the grain and hay, the breeders of the horses, the feed stores, the trailer makers, the pickup mechanics, the fence builders, the horse walker equipment

suppliers, the tack shops, the grooms, the farriers, the exercise riders, the trainers, the jockeys, sawdust and straw suppliers, the people who clean the stalls, the veterinarians, the owners - an estimated 10,000 people directly involved,ⁱⁱ depend on us and now you to save horseracing-most of them New Mexicans while the five racino owners [all but one from out of state] and the New Mexico Racing Commission are trying to destroy it or reduce its size. It is shameful but not too late.ⁱⁱⁱ

New Mexico had horseracing before any other State. We have reports of the Conquistadors racing horses in match races in New Mexico since Coronado in 1541. Horse racing is part of our New Mexico culture. In 1938 the Horse Racing Act was enacted allowing horse racing and pari-mutuel wagering in New Mexico.

In 1966, the New Mexico Horsemen's Association was formed. Every trainer and owner of a racehorse licensed by the New Mexico Racing Commission is an automatic member. Contributions to the Horsemen came from owners contributing 1% of their winnings to the Horsemen after their racehorse earns the money. The bookkeeper made the deduction after the race was official from the checks/deposits to the owner. A \$5.00 start fee and a \$2.00 PAC fee per horse running in a race was contributed by owners from their winnings[earned income] to help with medical bills for Horsemen members and for lobbying purposes.^{iv}

History of the litigation between the Horsemen and the NMRC

The Legislative solution arrived at in 1997:

In the 1990's, horse racing around the nation was a declining industry, so New Mexico designed legislation allowing racetracks to incorporate slot machines into their business as an effort to save New Mexico horse racing. See *NMSA 1978 60-2E-4* (when gaming activity is permitted); *NMSA 1978 60-1A-19*-(retainage and distribution of retained amounts); *NMSA 11-13-2* (revenue sharing of tribal gaming revenue); *Interstate Horseracing Act 15 U.S.C.A. § 3001 et. seq.*, the *New Mexico Horse Racing Act, NMSA 1978 § 60-1A-1 et. seq.*, the *Gaming Control Act N. M. S. A. 1978, § 60-2E-1et. seq.* especially *N. M. S. A. 1978, § 60-2E-47 E.* passed in 1997.

In a combination of working and legislative efforts, plus compacts with the indigenous people of our state, a plan was worked out and the modern method of horse racing was designed and implemented in New Mexico.

In 1999, the New Mexico State Legislature adopted the Compact Negotiation Act *NMSA 1978 11-13A-1 et. seq.* which formalizes the process for compact negotiations between the Tribes, (Indian nation, tribe or pueblo located in whole or in part within the state), and the State of New Mexico.

Horseracing faced a crisis and the New Mexico Legislature came up with a very good solution to save horseracing, which was - enter into a compact that prohibited full casinos except those our pueblos and nations built, but allow machines at the racetracks - now commonly referred to as racinos. The legislature told us by statute - take 20% of the net gain from the machines and use it for purse money.^v The Horsemen call that the gaming purse money.

The organization trusted to watch gaming purse money, trusted by the racinos and by all former racing commissioners were the Horsemen, who for 22 years collected it, deposited it, managed it, dispensed and disbursed it and every year had their work independently audited. The Horsemen did it at its own expense, millions of dollars in costs to Horsemen, and not at any cost to the New Mexico taxpayer. We did a perfect job - never losing a penny and we are speaking of over half a billion dollars. Each expenditure was approved by the Racing Commission in writing.^{vi} While doing that the Horsemen still provided millions of dollars since 1966 of health care benefits to its members.

The wrongful taking:

The racinos and the Racing Commission thought they could take certain expenses for insurance out of the gaming purse money. The Commission, contrary to the dictates of *NMSA 1978 § 60-2E-47 (E)*, directed and ordered certain operational costs[insurance premiums]of the racetracks be paid from the gaming purse money. The Horsemen, believing the gaming purse money could only be used for purse money in accordance with *NMSA 1978 § 60-2E-47 (E)*, objected to the misuse and wrongful taking.

The Horsemen were concerned but the Commission ordered it. Finally, with millions taken [over nine million dollars to date] and the Commission not listening to the Horsemen and its objections, in December of 2020, the Horsemen filed a Petition for Declaratory Judgment in the District Court asking a judge to decide if the gaming purse money could be used for anything else other than purse money. The District Judge has now ruled in the Horsemen's favor.^{vii} The gaming purse money can only be used for purses. However, the NMRC and the five racinos

intend to ask the New Mexico Legislature to change the law and allow the gaming purse money be used for certain expenses. The Horsemen oppose such.

Retaliation by the New Mexico Racing Commission:

In May, 2021, the New Mexico Racing Commission told the Horsemen to dismiss its Petition for Declaratory Judgment. The Horsemen did not. The Chairman of the Commission, Sam Bregman, prohibited the Horsemen from being on the agenda and making any remarks about the motion and decision, as he had several weeks before prohibited the Horsemen from contacting the Commission, giving a report to the Commission and/or participating in Commission meetings or having any involvement with Commission staff and/or Commissioners except through its lawyer.^{viii}

The Commission further retaliated by ordering the contributions to the Horsemen cease.^{ix} Horsemen members who are owners of race horses each time they won, placed or received money for a horserace contributed 1% of their winnings to the Horsemen, contributed \$5.00 every time they ran a horse for our medical program and contributed \$2:00 to our political action committee. It was the Horsemen's owner's money earned from racing their horses. The horsemen's bookkeeper, after the race was official, when paying out the winnings, would make those deductions and send them to the Horsemen. The Horsemen kept track of every penny. Every Racing Commission since 1966 approved this when it set the conditions for a particular race meet. The Horsemen have "condition books" showing this.

In May 2021, Chairman Bregman got the remaining commissioners to stop the contributions.^x The Horsemen appealed and asked the District Court to stay the order. Right after the Horsemen filed for the stay, the New Mexico Racing Commission had the New Mexico Gaming Control Board's Executive Director write a letter prohibiting the contributions, although the Gaming Control Board does not have jurisdiction.^{xi} It is important to remember the Chairman of the Racing Commission sits on the Board of Gaming Control. Any lawyer worth his or her salt knew the Horsemen would get a stay - the retaliation was so obvious, thus involving the Gaming Control Board was the back-up plan to break the Horsemen.^{xii} The Horsemen got the stay but then we had to appeal the Gaming Control letter [by the way, the Gaming Control Board never voted to order this letter]. The Horsemen won before their hearing officer but then the Gaming Control Board, led by Sam Bregman, refused to honor the decision of the Gaming Control board's Hearing Officer. The Horsemen have appealed that decision.

On August 6, 2021, after a hearing, the New Mexico State District Court entered an Order staying the Commission's Order. The relevant portions of the Stay Order reads as follows:

“IT IS THEREFORE THE ORDER OF THE COURT the Order of the New Mexico Racing Commission entitled, “IN THE MATTER OF THE RECEIPT BY THE NEW MEXICO HORSEMEN’S ASSOCIATION OF THE ONE PERCENT (1%) PURSE DIVERSION, \$5.00 STARTER FEE AND \$2.00 PAC FEE, having Commission number 2021-COMM-11 is hereby stayed.

IT IS THE FURTHER ORDER OF THE COURT the New Mexico Racing Commission shall notify all parties affected by their Order that in fact the Court has stayed said Order and any impact or effect thereof.”

The Commission has not obeyed the Court Order, even after sanctions and a New Mexico District Court ruling the gaming purse money could not be used for expenses but only for purses.

On November 19, 2021, the Gaming Board, sitting with the Chairman of the Commission as one of its members, rejected for the first and only time the decision of its own Hearing Officer. The minutes of the Gaming Board of its November 17, 2021 reflect the following:

“H. Pending and Threatened Litigation 1. Consideration of the Hearing Officer’s Recommendation of Granting Stay of Formal Hearing in the Appeal of the New Mexico Horseman’s Association v New Mexico Gaming Control Board. Commissioner Sam Bregman entertained a motion to REJECT the Hearing Officers Recommendation as identified above and to proceed with an administrative hearing on the merits. Moved: S. Bregman. Second: L. White. Vote: 4-1. Chairman J. Romero, Commissioner V. Billops, Commissioner S. Bregman, and Commissioner I. White voted to REJECT the Hearing Officer Recommendation to Stay a Formal Hearing in the Appeal described above. Commissioner E. Locher voted NAY to the motion.”

The Racing Commission was not through retaliating. New Mexico Racing Commission prohibited the Horsemen from addressing or contacting New Mexico Racing Commission except through its attorney, removed the Horsemen from all Committees, made rule changes to eliminate the Horsemen, then this past summer New Mexico Racing Commission ordered the Horsemen surrender all the gaming control money to the racinos.^{xiii} Now, no independent body watches over the gaming control money. [Please see the History of Horse Racing below]

The New Mexico Racing Commission then tried to interfere with federal law by excluding the Horsemen from approving simulcast contracts. Federal law requires a horsemen's association approve simulcasting at the racinos. The New Mexico Horsemen's Association is that horsemen's association.

The New Mexico Racing Commission then voted to unrecognize the Horsemen. The Horsemen have appealed that decision.

Sun Ray, the racino in Farmington, when the Horsemen would not accede to their demands regarding certain race conditions, ruled every director of the State Board off their racetrack, costing several of the Horsemen's directors a lot of money. The New Mexico Racing Commission and the Attorney General refused to do anything about it.

The New Mexico Racing Commission tried to get the Breeders to take over the Horsemen's duties. The Breeders, by a vote of 11 to 0, refused.

The New Mexico Racing Commission has been sanctioned for not obeying the stay order. In Federal Court, the Horsemen are pursuing damages under the Federal Civil Rights Act for retaliation for the Horsemen's exercise of its First Amendment rights to free speech, to associate, to assemble and most important to file for redress of grievances [the declaratory judgment action]. The damages exceed \$700,000 plus attorney fees and court costs.^{xiv}

It is altogether very obvious what the New Mexico Racing Commission is trying to do, that is, get rid of the Horsemen, allow the Commission and the racinos to use the gaming purse money for expenses rather than purses, reduce the days of the meets, reduce the number of horse races, cut down to as little as possible the expense of horse racing. Let's not kid ourselves - the racinos think they can make more money without horseracing and they do not care they are destroying the income of 10,000 plus New Mexicans, would be in violation of the Indian Gaming Compacts and federal law. They have almost got it done with the only thing standing in their way being the Horsemen, the New Mexico Legislature and a few judges.

Here are the issues and the solutions:

ISSUES AND SOLUTIONS

1. **Issue:** Retaliation by the New Mexico Racing Commission and Racetrack Management against the New Mexico Horsemen's Association because the Horsemen objected to wrongful taking of gaming purse money, shortening of

race meets, racing conditions, extra charges to Horsemen, poor backside conditions, ethical conflicts, rule changes to eliminate the Horsemen, improper taking of contributions to the Horsemen, interference with federal and state law and removal of Horsemen as the trustee and caretaker of gaming purse money.

Solution:

- A. New Mexico Racing Commission pay for the amount of the contributions stopped which now exceeds \$700,000; reinstate the Horsemen to all committees and repeal the retaliatory rule changes. Require the New Mexico Racing Commission reinstate contributions from the owner of race horses who wins a portion of the purse and reinstate the program that deducted the money from the owners' money and sent it to the Horsemen.**
- B. Defeat any calls to modify the gaming purse money statute which supplies purse money for the industry.**
- C. Require all licensees to have health insurance and request the New Mexico Horsemen's Association provide to its members a group health insurance policy with a catastrophic insurance provision each member may purchase and require the Horsemen increase its membership to allow jockeys and exercise riders be members so jockeys and exercise riders may purchase adequate insurance coverage.**
- D. Require that the New Mexico Horsemen's Association be the watchdog over the gaming purse money and require the New Mexico Horsemen's Association provide an annual audit of the gaming purse money showing the amounts received, the amounts spent to the penny with a written approval of each expenditure from the New Mexico Racing Commission and do so at no cost to the New Mexico taxpayer.**
- E. Require the New Mexico Horsemen's Association be allowed and have a member and be a member of all committees of the New Mexico Racing Commission.**

2. **Issue:** Retaliation by Sun Ray [Farmington racino] against Directors of the Horsemen because the Horsemen refused to be coerced into Sun Ray's simulcast agreement.^{xv}

Solution:

Sun Ray will have to pay damages to be determined by a District Court but the New Mexico Racing Commission must prohibit and punish this type of conduct by a racino against the Horsemen's directors and members. The New Mexico Racing Commission has to make certain horse racing in New Mexico is free from bias, prejudice, undue influence, economic coercion and political influence of the racino owners.

3. **Issue:** Failure of the New Mexico Racing Commission to support industry stakeholders that is, the people of New Mexico, the gambling public, the Horsemen and the race horse industry rather than the five owners of the racinos.

Solution:

- A. Combine the New Mexico Racing Commission with the Gaming Control Board and set forth ethical rules for members to avoid conflicts of interest and monetary conflicts. Require each member of the Racing/Gaming Board have knowledge of the gaming and horse racing industries.
- B. Require the New Mexico Racing Commission in concert with the New Mexico Horsemen's Association and the New Mexico Horse Breeders Association conduct a scientific study of the economic impact of horse racing in New Mexico and report back to the New Mexico Legislature with joint recommendations for improvement.
- C. Defeat any calls to modify the gaming purse money statute which supplies purse money for the industry.
- D. Require the New Mexico Racing Commission reinstate contributions from the owner of race horses who win a portion of the purse and

reinstate the program that deducted the contributions from the owners' money and sent it to the Horsemen.

- E. Require that the New Mexico Horsemen's Association be the watchdog over the gaming purse money and require the New Mexico Horsemen's Association provide an annual audit of the gaming purse money showing the amounts received, the amounts spent to the penny with a written approval of each expenditure from the New Mexico Racing Commission and do so at no cost to the New Mexico taxpayer. The Horsemen should be reinstated with access on a daily basis to watch over and account for every penny of gaming purse money. The Horsemen kept excellent records and every year had an independent audit. The Horsemen had a perfect record never losing a penny of the gaming purse money. The Horsemen kept the records without any cost to the New Mexico taxpayer. A perfect record with no costs to the State of New Mexico means the decision of the NMRC was not only an act of retaliation but also very ignorant. The Horsemen are happy to provide this watch dog duty without cost.
- F. Require the New Mexico Horsemen's Association have a member and be a member of all committees of the New Mexico Racing Commission.

4. **Issue:** Failure of the New Mexico Racing Commission to follow requirements of New Mexico Law such as require year- long racing in order for the racinos to be open and failure of the racing commission to have a race meet be at least 60 days long rather than 30 days except, of course for the New Mexico State Fair^{xvi}

Solution:

Demand the New Mexico Racing Commission have a full year of horse racing and demand racetracks schedule in such a fashion horses always have a barn to stall in and a track to exercise on in between race meets. Such a schedule is easy to accommodate and organize.

5. **Issue:** Failure of the New Mexico Racing Commission to consult and seek consent of New Mexico Board of Veterinary Medicine regarding proper medication of horses in order to protect the horses especially the use of Lasix at high altitudes.

Solution:

Change the law so that New Mexico Veterinarians, who practice equine healthcare must serve on all committees regarding medication, have an equal vote and the New Mexico Racing Commission takes their advice into consideration.

6. **Issue:** Failure of the New Mexico Racing Commission to require racinos to enhance horse racing rather than denigrate and diminish it and obligate themselves to enhancement/improvement projects for racing rather than attempting to decrease horse racing which means writing conditions for horse races beneficial to the horsemen of New Mexico.

Solution:

- A. The New Mexico Racing Commission must become an advocate for horse racing not the destruction of it. Bluntly, all present Commissioners be neutral, ethical, follow the law and not retaliate against those who point out and protest illegal, wrongful acts.**
- B. Require the New Mexico Racing Commission set forth rules to prevent discrimination in the allotting of stalls and barns during its race meet. Presently, if the particular racino does not like a trainer or owner, the racino simply denies stalls or severely limits the stalls.**
- C. Require the New Mexico Racing Commission develop rules and a practice having experts set forth the conditions of the race and race meet so as to fill all races, accommodate owners and trainers and in particular not discriminate against a particular licensed trainer and/or owner. Sadly, a racino can set forth as conditions for a horse race conditions which virtually eliminate all horses, owners and trainers the racino disfavors.**

7. **Issue:** Failure by the New Mexico Racing Commission to keep proper and accurate accounting records of the gaming purse money and allow the Horsemen access to that information.

Solution:

- A. The Horsemen kept excellent records and every year had and still has an independent audit. The Horsemen had a perfect record never losing a penny of the gaming purse money. The Horsemen kept the records without any cost to the New Mexico taxpayer. A perfect record with no costs to the State of New Mexico means the decision of the New Mexico Racing Commission was not only an act of retaliation but also very ignorant. The Horsemen should be reinstated with access on a daily basis to watch over and account for every penny of gaming purse money. The Horsemen are happy to provide this watch dog duty without cost.**
- B. Demand the keepers of the purse money be transparent and the New Mexico Racing Commission, the Horsemen and the Horse Breeders have the ability to check the accounts on a day-to-day basis to ensure the money is present, no money is being wrongfully taken and permission for each expenditure is approved in writing by the New Mexico Racing Commission.**

8. **Issue:** Failure of the New Mexico Racing Commission to ensure qualified personnel are hired to fill HISA positions.^{xvii}

Solution:

The Fifth Circuit United States Court of Appeals has declared HISA unconstitutional. Until the United States Supreme Court takes the case and reverses the Fifth Circuit that decision now stands and HISA is not applicable. If the decision is reversed and HISA becomes effective again, the New Mexico Racing Commission has to ask the New Mexico Legislature for an appropriation to pay the HISA dues which may be close to one million dollars annually, must reinstate the Horsemen and

because HISA places horses running in New Mexico in jeopardy due to lack of Lasix the New Mexico Racing Commission should have to work closely with and follow the advice of veterinarians and their association.

9. **Issue:** *Failure of the New Mexico Racing Commission to authorize the State's 6th racetrack.*

Solution:

- A. Approve the sixth license if the license meets necessary requirements which apparently it has according to the District Court. A Sixth license brings income to a particular area of the State, enhances opportunities for New Mexicans to own, train and race horses in more areas of the State and increases the number of New Mexicans involved in the horse racing industry. It is estimated the new license will bring in revenues of up to \$55 million per years and secure 500 new jobs. [Estimates by the Coronado Partners proposing the license for Tucumcari, New Mexico.]

10. **Issue:** *Ethical violations*

Solution:

- A. Combine the New Mexico Racing Commission with the Gaming Control Board and set forth ethical rules for members to avoid conflicts of interest and monetary conflicts. Require each member of the Racing/Gaming Board have knowledge of the gaming and horse racing industries.
- B. Require all Racing Commissioners, during their term of appointment, not be engaged in the racing of horses and if they have been, place their horses and racehorse business in a blind trust.

History of Horse Racing in New Mexico [1541 to present]

1541: Earliest history of horse racing in what is now the State of New Mexico

New Mexico, since the Conquistadors, has had some type of horse racing and no doubt people bet on those races. The first recorded horserace in what is now the United States took place in New Mexico. In 1541, the Spanish explorer Coronado challenged one of his officers to a match race while they were camped near Bernalillo, New Mexico.

1938: In 1938 the Horse Racing Act was enacted allowing horse racing and pari-mutuel wagering in New Mexico.

After statehood, horse racing at the State Fair began in 1938, making it the oldest race meet in New Mexico.

1946: La Mesa Park opened for both Thoroughbred and Quarter Horse Racing in 1946.

1953: In Ruidoso Downs, the Rio Ruidoso flooded in in the early 1940ies, washing out the Miller farm. Enterprising horsemen moved the rocks and fixed up a track, brought a rodeo stand from Capitan, New Mexico and by 1945 began informal horse racing. In 1953, Eugene Hensley began managing the track and then he, Carl Mercer and a cowboy musician named Ray Reed created the All American Futurity.

1959: Sunland Park Racetrack opened its doors on October 9, 1959.

1966: In 1966 the New Mexico Horsemen's Association was formed. Every trainer and owner of a racehorse licensed by the New Mexico Racing Commission would be an automatic member. Contributions to the Horsemen came from owners contributing 1% of their winnings to the Horsemen after their racehorse earned the money. The bookkeeper made the deduction after the race was official from the checks/deposits to the owner. Later a \$5.00 start fee and a \$2.00 PAC fee per horse running in a race would be contributed by owners from their winnings[earned income] to help with medical bills for Horsemen members and for lobbying purposes.

1971-1999: Santa Fe had a track for a while opening in June of 1971.

1975: Santa Fe Downs closes.

1976: Santa Fe Downs reopens. but by 1997 closed again. After *racing* was revitalized in New Mexico following the passage of "racino" legislation in 1999,

the county fairgrounds track reopened that year as *SunRay Park* as did a racetrack as Hobbs, New Mexico known as Zia Park.

1984: San Juan Downs opens

1987: Prior to indigenous people having casinos, horseracing in New Mexico was the primary source of legalized gaming. In 1987, the United States Supreme Court in *California v. Cabazon Band of Mission Indians*, Supreme Court of the United States, February 25, 1987, 480 U.S. 202,107 S.Ct. 1083,94 L.Ed.2d 244,55 USLW 4225, indicated that if state law criminally prohibits a form of gambling, then the tribes within that state may not engage in that activity. However, if state law civilly regulates a form of gambling, then the tribes within the state may engage in that gaming free of state control. This is the legal foundation upon which Indian gaming is based.

1988: In 1988, the IGRA (*Indian Gaming Regulatory Act*), *25 U.S.C. §§ 2701 et seq.* was established by Congress as the federal regulatory scheme that governs Indian gaming throughout the United States. The act itself established three classes of Indian gaming: Class I, II and III gaming.

1990:In 1990, New Mexico Gov. Bruce King appointed a task force to negotiate gaming compacts with the Pueblo of Sandia and Mescalero Apache Tribe. In 1991, the Gubernatorial-appointed task force presented two negotiated Class III gaming compacts to Gov. King, but he refused to sign them.

In the 1990's, horse racing around the nation was a declining industry, so New Mexico designed legislation allowing racetracks to incorporate slot machines into their business as an effort to save New Mexico horse racing. See *NMSA 1978 60-2E-4; NMSA 1978 60-1A-19; NMSA 11-13-2 etc.*

1993: La Mesa Park in Raton, New Mexico closes as does San Juan Downs in Farmington

1994: In 1994, Governor King was defeated for reelection by Gary Johnson, who publicly committed to signing tribal-state compacts if elected.

1995: Professor Fred Ragsdale, in 1995, was appointed by Governor Gary Johnson to negotiate compacts with various Indian tribes. In February 1995, 13 identical compacts were signed between the State of New Mexico and the Pueblos of Acoma, Isleta, Laguna, Pojoaque, Sandia, San Felipe, San Juan, Santa Ana,

Santa Clara, Taos and Tesuque, and the Jicarilla and Mescalero Apache Tribes. Later that year, the New Mexico Supreme Court, in *State ex rel. Clark v. Johnson*, July 13, 1995, 120 N.M. 562, 904 P.2d 111, 995 -NMSC- 048, ruled that Governor Johnson lacked the authority to sign the compacts on behalf of the state.

1997: Santa Fe Downs closes for the second time.

1997: In 1997, the U.S. Court of Appeals for the 10th Circuit, in *Pueblo of Santa Ana v. Kelly*, United States Court of Appeals, Tenth Circuit, January 10, 1997, 104 F.3d 154,697 CJ C.A.R. 90, reasoned similarly to the New Mexico Supreme Court decision in *State ex. Rel Clark v. Johnson*, that the governor lacked authority to bind the state to the compacts and thus did not comply with IGRA. The 1995 gaming compacts were then introduced into the 1997 New Mexico legislative session to comply with the court rulings. The compacts were approved by the legislature and signed by Governor Johnson.

1997: In 1997, the *Gaming Control Act, N. M. S. A. 1978, § 60-2E-1et. seq.* was passed. The act became effective on the date that a tribal gaming compact was agreed upon and executed by an Indian nation, tribe or pueblo and the state is approved pursuant to the provisions of the Indian Gaming Regulatory Act, *25 USCA Section 2701, et seq.*” In 1997, the legislature of the State of New Mexico and the Governor of the State signed into law the *Gaming Control Act, NM ST § 60-2E-1et seq.* The provisions of the Gaming Control Act were effective on the date that a tribal gaming compact agreed upon and was executed by an Indian nation, tribe or pueblo and the state was approved, pursuant to the provisions of the *Indian Gaming Regulatory Act, 25 USCA Section 2701, et seq.* Tribal gaming compacts between the State of New Mexico and the Mescalero Apache Tribe, Pueblo of San Felipe, Pueblo of Pojoaque, Pueblo of Tesuque, Pueblo of Laguna, Pueblo of Santa Clara, Pueblo of Sandia, Pueblo of Taos, Pueblo of Acoma, and Pueblo of Isleta were executed on July 9, 1997 and were published in the Federal Register and considered approved on August 29, 1997 pursuant to the provisions of the *Indian Gaming Regulatory Act of 1988, 25 U.S.C.A. § 2701.* See *62 FR 45867.* A tribal gaming compact between the State of New Mexico and the Pueblo of San Juan was executed on July 11, 1997 and was published in the Federal Register and considered approved on October 15, 1997 pursuant to the provisions of the Indian *Gaming Regulatory Act of 1988, 25 U.S.C.A. § 2701.* See *62 FR 53650.*

Tribal gaming compacts between the State of New Mexico and the Pueblo of Picuris, Pueblo of Santa Ana, and the Jicarilla Apache Tribe were executed on

August 20, 1997. A tribal gaming compact between the State of New Mexico and the Pueblo of Nambe was executed on September 5, 1997. The notice of these compacts was published in the Federal Register and they were considered approved on November 5, 1997 pursuant to the provisions of the *Indian Gaming Regulatory Act of 1988, 25 U.S.C.A. § 2701. See 62 FR 59878*. Pursuant to *62 FR 45867, 62 FR 53650, and 62 FR 59878*, “these compacts are considered approved, but only to the extent the compacts are consistent with the provisions of IGRA”.

1997: The Gaming Control Act became effective and the “racinos” came into effect at Albuquerque, Sunland Park and Ruidoso.

1997: Proceeds from the 20% net of gaming proceeds to be used for purses would be collected and turned over to the New Mexico Horsemen’s Association for accounting, management, disbursement and dispensing. The New Mexico Horsemen’s Association at their own expense from 1997-2022 would take care of these monies and never lose a penny of the money. Every penny dispensed was approved by the New Mexico Horsemen’s Association.

1999: The New Mexico State Legislature, in 1999, adopted the *Compact Negotiation Act, NMSA 11-13A-1et. seq.*, which formalized the process for compact negotiations between the tribes and the State of New Mexico.

1999: Sun Ray opens in Farmington and Zia Park in Hobbs, New Mexico opens. There are now five “racinos”.

2000: The Attorney General for New Mexico, in 2000, sued the gaming tribes for non-payment of “revenue-sharing” under the 1997 gaming compacts. All gaming tribes, with the exception of Mescalero and Pojoaque, settled the case with the state as a precondition to signing the 2001 gaming compacts

2001-2005: In 2001, new gaming compacts were negotiated and approved by the New Mexico State Legislature. All tribes signed the 2001 gaming compact, with the exception of Mescalero and Pojoaque. However, by 2003, the State and the Navajo Nation entered into a 2001 gaming compact; in 2004, the Mescalero Apache Tribe settled disputes with the State and entered into the 2001 gaming compact; and in 2005, the Pueblo of Pojoaque settled disputes with the State and entered into the 2001 gaming compact.

2007: Amendments to the 2001 Tribal-State Class III Gaming Compact were negotiated and approved by the New Mexico State Legislature. Nine gaming tribes signed the 2007 Amendments including the Pueblos of Isleta, Laguna, Sandia, San Felipe, Santa Ana, Santa Clara, Taos and Tesuque, and Ohkay Owingeh. Two non-gaming tribes, the Pueblos of Nambe and Picuris, also signed the 2007 Amendments. The impact of gaming by indigenous people's nations had an immediate impact on legalized horse racing. See **"The Impact of Gaming on the Indian Nations in New Mexico"** by Thaddieus W. Conner, University of Oklahoma and William A. Taggart, New Mexico State University published in the Social Science Quarterly, Vol. 90, Number 1, March 2009 by the Southwestern Social Science Association; ***Indian Gaming Regulatory Act, 25 USCA Section 2701, et seq.***; See also ***LFC Hearing Brief, Gaming & Racing, July 12, 2019*** https://www.nmlegis.gov/Entity/LFC/Documents/General_Government/Hearing%20Brief%20%20Racing%20and%20Gaming%20Industry%20Trends.pdf.

2009: The New Mexico Racing Commission begins approving the racinos take one-half of the costs of insurance from the gaming purse money. The Horsemen are ordered to pay the one-half amounts to the individual racetracks based on their insurance costs.

December 2, 2020: Despite repeated requests and objections to this taking of gaming purse money for purposes other than purses, the Horsemen, who have been the protectors of this money, were forced to protect the gaming purse money by filing a petition for declaratory judgment and seek a remedy for the return of all or a portion of the money. On December 2, 2020, after attempting to obtain relief from the Commission, the New Mexico Horsemen's Association filed a Petition for Declaratory Judgment and Relief in the 2nd Judicial District Court, County of Bernalillo County State of New Mexico. The Cause No. is D-202-CV-2020-06564. The Petition for Declaratory Judgment and Relief named the New Mexico Racing Commission and each of the Commissioners of the Racing Commission. Later, in an amended Petition, each of the licensed racinos/racetracks was named.

The primary issue in the Petition is whether gaming purse monies received from each of the Racetracks/Casinos may be used for other purposes other than purse monies as directed by ***NMSA 1978 § 60-27E-47 E***. Of particular import was the taking of over Eight Million Dollars to pay for jockey and exercise liability insurance to the racetracks/casinos and the order by the New Mexico Racing Commission the monies be paid.

The second amended Petition for Declaratory Judgment sought an answer to the question of the intent of the statute so that all parties could do as the law required and not place their association, license or agency in jeopardy. Currently a Motion for Summary Judgment filed by the Horsemen is pending with full briefing done and submitted to the Court for decision. A hearing was set for September 15, 2022 and the Court ruled the *NMSA 1978 Section 60-27-47 E* monies could only be used for purses and not for other expenses or purposes.

May 20, 2021: Retaliation against the Horsemen and the attempts to destroy the Horsemen's Association began with the Commission prohibiting the Horsemen from appearing before the Commission and then the New Mexico Racing Commission and its members were angered the Horsemen filed the Declaratory Judgment Petition and retaliated against the Horsemen and continue to retaliate to this very date. On May 20, 2021, without cause or complaint, granting no Due Process to the Horsemen by giving them notice or opportunity to be heard and acting in an arbitrary and capricious manner, the New Mexico Racing Commission, by vote of the four members in attendance, took away from the Horsemen a major portion of the Horsemen's funding by passing a motion ordering and directing that no person take and contribute to the Horsemen 1% of their purse winnings, that no person take and contribute to the Horsemen a \$5.00 starter fee or a \$2.00 PAC fee. This money which was earned income by the owners from purses was paid from the owner/Horsemen members earned income, and had been the practice for decades. Since May 20, 2021, due to the Order of the Commission all such contributions from owner/members have been blocked for no valid reason.

On Thursday, May 20, 2021, according to the New Mexico Racing Commission Regular Meeting Final Agenda, under item 9, the following was noted: "Unfinished/New Business and/or Action Items: C. Discussion and possible Commission action on whether to approve NMHA's Receipt of 1% of Purse Money, \$5.00 Starter Fee and \$2.00 PAC Fee". This was the first and only notice of any kind the Horsemen received, although in the month prior, the Commission had demanded information about the purse accounts and the 1% from the Horsemen and the Horsemen had provided detailed information, including copies of audits, condition books and other financial documents. The Horsemen were not invited to discuss the matter and no allegations of any kind had been alleged or any financial discrepancies noted. In fact, there were none. The Horsemen's bookkeeping, accounting and audits were so good the Commission often called for and relied on them for their own audits and financial information.

All prior Commissions had allowed the contributions and the method of paying the contributions, by the owners of racehorses who were members of the Horsemen.

The order/decision/motion of the New Mexico Racing Commission in relevant part states the following:

“At this morning’s regular monthly meeting of the NMRC, the Commissioners brought forth and unanimously passed a motion impacting the New Mexico Horsemen’s Association and all five (5) horse racing tracks throughout New Mexico. Specifically, the motion unanimously passed by the NMRC is that the New Mexico Horsemen’s Association is to immediately discontinue the practice of requiring its membership to pay the 1% purse diversion, the \$5.00 Starter Fee and the \$2.00 PAC fee stemming from their participation in horseracing in New Mexico. The motion also is to instruct all five (5) racetracks to not provide those improper funds to the New Mexico Horsemen’s Association.”

“Therefore, please communicate this mandatory decision by the NMRC to the membership of the New Mexico Horsemen’s Association and advise its leadership that it needs to immediately begin taking action to stop all processes in place by which the 1% purse division, \$5.00 Starter Fee and \$2.00 PAC fee is collected.”

“A letter is being sent to all five (5) racetracks advising them of the NMRC decision and directing each of them to begin taking the necessary steps to ensure it no longer participates in any business practices which involve the improper diversion of purse money to the New Mexico Horsemen’s Association.”

The New Mexico Racing Commission and its Commissioners, on May 20, 2021, asserted falsehoods against the New Mexico Horsemen’s Association asserting the Horsemen had taken hundreds of thousands of dollars from the gaming purse money which the Horsemen for over 20 years had been collecting, managing, dispensing and disbursing.

The records of the New Mexico Horsemen’s Association, the records of the New Mexico Racing Commission, and independent audits showed clearly the Horsemen had never lost or taken a penny of the money. Furthermore, every penny taken from the accounts and paid out was approved in writing by the New Mexico Racing Commission which was supposed to keep such records. The Horsemen did and has kept the records showing all approvals. Independent audits show the Horsemen never lost a penny of the gaming purse proceeds.

Executive Directors of the New Mexico Racing Commission had approved in writing every cent disbursed since the Horsemen had managed the gaming purse accounts. The Executive Director of the Racing Commission, on May 20, 2021, sat by knowing the truth and sadly did nothing to correct the falsehood.

The true motive behind the order/directive was and is to deprive the Horsemen of all or a large portion of funding because the Horsemen objected to racetracks using “purse monies” for operational expenses [insurance]; Horsemen had also objected to the Commission canceling race meets and/or shortening race meets which is a different issue than the pandemic closures. Horsemen refused to pay from purse money the operational expenses of the racetracks, and Horsemen were demanding racetracks keep the tracks and backsides in good, clean and safe condition.

In the last few years, the Racing Commission and the track owners have not only taken wrongfully over nine million dollars in purse money but have cancelled race meets and have shortened race meets. Lack of racing jeopardizes the racing industry forcing owners and trainers to leave the State of New Mexico in order to make a living racing horses. Lack of racing also violates New Mexico law, *NMSA 1978, § 60-2E-27* and violates the Gaming Compacts, *NMSA 1978 § 11-13-2 et. seq.*, from which the State of New Mexico receives millions of dollars per year in taxes [60 to 80 million dollars per year].

The New Mexico Racing Commission and its five Commissioners, without just cause, merit, jurisdiction or authority, have intentionally done what they could to destroy the New Mexico Horsemen’s Association because of the advocacy of the Association regarding horse racing in New Mexico. They have directed their attack toward the greatest vulnerability of a not-for-profit organization, which are monetary contributions to that association.

The “20%” net take of the “racinos” amounts to \$30 to 40 million dollars a year and is for purses according to *NMSA 1978 Sec. 60-2E-47 (E)*. It is the New Mexico Horsemen’s Association that collects, accounts for, manages, dispenses and disburses the “purse money.” The Horsemen also have an independent audit done every year to make certain they are doing the work properly. It is a difficult task because of the need to keep each racetrack’s 20 % net in separate accounts because there are five racetracks and five casinos. In a short summary, this is the way it works:

- a. The casinos pay the “20%” net every week to the Horsemen.
- b. The Horsemen deposit the “20%” net in each account or accounts designated for a particular racetrack and the money for one track is not comingled with that of another.
- c. When a particular racetrack is running a live meet, that racetrack calls for money to pay purses that are set according to a “condition book”. The request is in writing and in the last few years has been an email.

- d. Once an email is received, the Horsemen email the New Mexico Racing Commission and ask written permission to disburse and dispense the requested amount to the particular racetrack.
- e. Once written permission is received from the New Mexico Racing Commission, [typically a letter from the New Mexico Racing Commission sent via email] the Horsemen then pay to the particular racetrack the amount requested which is generally done electronically.
- f. The racetrack then pays, after the horse race is official, to the owners of the horses who ran in the race, the amounts due, depending on the finish of their horse in the race. It is at this time certain deductions the parties have all agreed on [the practice since 1966] are deducted from the amount the owner has earned from racing his, her or its horse. Those deductions are for the jockey's fee, the costs of the photographer, if any, and the contributions the owner/Horsemen members make to the New Mexico Horsemen's Association which is 1% of the amount won, a \$5.00 starters fee used for support of the health program of the Horsemen and \$2.00 for the PAC [lobbying fee].
- g. As required by law, the PAC money is kept in a separate account by the Horsemen as is the health care fee [starter's fee]. The 1% goes into the Horsemen's general account and is used to pay the costs of collecting, managing, accounting, disbursing and dispensing the purse money from the "20%" net. The Horsemen use their own monies [received from contributions] to do the collecting, managing, accounting for, disbursing and dispensing. Excepting 20% of the interest earned on the purse money [a small and inadequate amount] the Horsemen receive no funding from any racetrack, state agency or taxpayer to do this work. Every year an independent audit is done. The Horsemen have contributed millions of dollars to protect, manage and account for the gaming purse money.

In all the years since the *Gaming Act* and the "20%" net for purses has been in effect, the parties involved have never been a penny short despite the fact it is millions of dollars. The Horsemen's staff worked hard to ensure "the books" balance.

May 23, 2021: The Horsemen appealed from the Order of the New Mexico Racing Commission, on May 23, 2021, by filing an Appeal to the District Court. The Horsemen on June 8, 2021, filed a Motion to Stay the Decision of the New Mexico Racing Commission.

June 8, 2021: Horsemen filed a Motion to Stay Decision of the New Mexico Racing Commission

June 21, 2021: The Commission then conspired with the New Mexico Gaming Control Board [hereinafter Gaming Board] to have the New Mexico Gaming Control Board issue a written directive/order dated June 21, 2021, to the racetrack/casinos preventing the collection of contributions to the Horsemen from owner/Horsemen members who had a horse win purse money.

July 12, 2021: The Horsemen on July 12, 2021, did appeal the directive/order of the Gaming Board.

August 6, 2021: On August 6, 2021, after a hearing, the District Court entered an Order staying the Commission's Order. The relevant portions of the Stay Order read as follows:

"IT IS THEREFORE THE ORDER OF THE COURT the Order of the New Mexico Racing Commission entitled, "IN THE MATTER OF THE RECEIPT BY THE NEW MEXICO HORSEMEN'S ASSOCIATION OF THE ONE PERCENT (1%) PURSE DIVERSION, \$5.00 STARTER FEE AND \$2.00 PAC FEE, having Commission number 2021-COMM-11 is hereby stayed.

IT IS THE FURTHER ORDER OF THE COURT the New Mexico Racing Commission shall notify all parties affected by their Order that in fact the Court has stayed said Order and any impact or effect thereof."

The Commission has not obeyed the Court Order, and in fact, after the Horsemen filed their appeal and their Motion to Stay, conspired with another agency, the New Mexico Gaming Control Board [hereinafter Gaming Board], to continue to stop the contributions by having the Gaming Board issue a similar directive or order.

October 15, 2021: The Horsemen at a formal hearing before Hearing Officer, M. David Chacon, II on Friday, October 15, 2021, prevailed before the Hearing Officer of the Gaming Board.

November 19, 2021: The Gaming Board, sitting with the Chairman of the Commission as one of its members, on November 19, 2021, rejected for the first and only time the decision of its own Hearing Officer. The minutes of the Gaming Board of its November 17, 2021 reflect the following:

"H. Pending and Threatened Litigation 1. Consideration of the Hearing Officer's Recommendation of Granting Stay of Formal Hearing in the Appeal of the New Mexico Horseman's Association v New Mexico Gaming Control Board. Commissioner Sam Bregman entertained a motion to REJECT the Hearing Officers Recommendation as identified above and to proceed with an administrative hearing on the merits. Moved: S. Bregman. Second: L. White.

Vote: 4-1. Chairman J. Romero, Commissioner V. Billops, Commissioner S. Bregman, and Commissioner I. White voted to REJECT the Hearing Officer Recommendation to Stay a Formal Hearing in the Appeal described above. Commissioner E. Locher voted NAY to the motion.”

The New Mexico Racing Commission has taken a number of actions to change administrative rules to oust the Horsemen from any participation as an advocate and have engaged in an all-out conspiracy to destroy the Horsemen by a change of rules, false allegations, lies to legislative committees, an attempt to transfer Horsemen’s privileges and duties to the racetracks/casinos and to the New Mexico Horse Breeders Association. The Commission has and continues to this very day to deprive the Horsemen of contributions from its own members which now total over \$400,000.

November 18, 2021: On November 18, 2021, the Commission, despite protest from the Horsemen adopted the following rules which are relevant to the issue of contributions to the Horsemen.

- (1) ***Subsection D(4) of 15.2.3.8 NMAC-bookkeeper: payment of purses.*** The Commission’s new rule made certain no monies were paid to the Horsemen as contributions.
- (2) ***Subsection C (4) of 15.2.3.8 NMAC-Racing Secretary-***The old rule required agreement of the Horsemen to racing conditions. The new rule which was passed eliminated the Horsemen from consideration.
- (3) ***Subsection C (2 of 15).2.6.9 NMAC-*** Medication restrictions was changed to eliminate the Horsemen’s approval regarding medication or use or presence of drug substances.
- (4) The Commission sought to change ***NMAC 15.2.6.10*** regarding Storage and shipment of split samples and the potential of an insufficient sample [the test to determine if a horse ran on illegal or outlawed substances] from that of dismissal to the insufficient sample being sufficient. The Commission did not pass this change.

February 17, 2022: At the regular February 17, 2022 meeting, the Commission considered and adopted the following rules which do away with the Horsemen collecting, managing, dispensing and disbursing the gaming tax purse monies and having knowledge of what is occurring with the gaming purse monies:

- (1) The Commission proposed to amend and did amend ***Subsection H of 15.2.1.8 NMAC.*** The rule in its current form reads:

“H. Organization's financial requirements:

- (1) The New Mexico horse breeders' association shall establish interest-bearing accounts, designated as gaming funds for purses.
- (2) The New Mexico horse breeders' association shall ensure all accounting of funds deposited with and paid out or distributed by the New Mexico horse breeders' association pursuant to the Horse Racing Act is in accordance with or exceeds generally accepted accounting principles.
- (3) The New Mexico horse breeders' association shall provide at a minimum the following insurance policies:
 - (a) \$1,000,000 cyber liability
 - (b) \$1,000,000 directors, officers, and employment practices
 - (c) \$1,000,000 employee theft
- (4) The New Mexico horse breeders' association will provide the New Mexico racing commission with a copy of their yearly independent audits, and proof of insurance.
- (5) The New Mexico horsemen's association and the New Mexico horse breeders' association with regard to gaming monies shall keep accurate, complete, and legible records with reports to the commission to include:
 - (a) monthly reconciliation of amounts collected to account statements;
 - (b) copy of account authorizing signatures;
 - (c) any changes in authorizing signatures; and
 - (d) detail of disbursements from the accounts.”

The amendment strikes in # (5) “the New Mexico horsemen’s association” and changes it to “associations and the”. This change removed the New Mexico Horsemen’s Association and by changing it to associations, this means racetracks/casinos collect, manage, dispense and disburse their own gaming purse money. By definition in the Regulations “associations” are the racetracks/casinos. *NMAC 15.2.1.7 (A) (8)* gives the following definition. “ ‘Association’ is an individual or business entity holding a license from the commission to conduct racing with pari-mutuel wagering.”

It was a blatant move to remove the Horsemen and have the racetracks/casinos collect, manage, account for, dispense and disburse the gaming purse monies. In short the very safeguard of having the Horsemen guard, watch over and protect the gaming purse monies from wrongful takings by the racetracks/casinos or others such as the Commission and Gaming Control Board are no longer present and that safeguard is removed. It is no small sum of money ranging from thirty to sixty million per year. Obtaining information as to deposits, withdrawals, disbursals, etc. will not happen. The rule changes by the Commission leave tens of millions of dollars, each year, unprotected.

The Commission amended *NMAC 15.2.2.9* to exclude the New Mexico Horsemen’s Association. The rule in its past form reads as follows:

N.M. Admin. Code 15.2.2.9
15.2.2.9 GAMING

A. Associations' financial requirements:

- (1) An association who is a gaming operator shall pay twenty percent of the net take to purses.
- (2) An association shall provide a weekly report of the previous week's daily net take payment to purses every Monday to the commission, the New Mexico horsemen's association and the New Mexico horsebreeders' association.
- (3) All monies remitted by the association to the New Mexico horsemen's association shall be reconciled and settled within 30 days of the generation of monthly reports from the gaming control board.
- (4) An association will be liable for all portions of the gaming funds for purses from such time as the funds are received into the gaming machines until the funds are deposited into the designated interest bearing accounts. The commission may take whatever action is available under the existing rules regarding fines, suspension or revocation of license should the association fail to deposit the funds in accordance with Paragraph (1) of Subsection B of Section 15.2.2.9 NMAC.
- (5) The twenty-percent of the net take to purses shall be distributed as follows:
Nineteen and three tenths percent of the net daily take deposited by the association will be distributed weekly by the New Mexico horsemen's association to the New Mexico horsebreeders' association to the purse fund; eighty and seven tenths percent of the net daily take deposited by the association will be distributed to the existing purse structures determined and approved by that race meet's local horsemen's committee, the horsemen's state board, and approved by the commission.

B. Organizations' financial requirements:

- (1) The New Mexico horsemen's association shall establish interest-bearing accounts, designated as gaming funds for purses. An association shall deposit, by 1:00 o'clock p.m. Monday of each week except for legal holidays which will be deposited on the next business day, twenty percent of the daily net take as defined in the gaming control act.
- (2) The New Mexico horsemen's association and the New Mexico horsebreeders' association shall keep accurate, complete, and legible records with reports to the commission to include:
 - (a) monthly reconciliation of amounts collected to account statements;
 - (b) copy of account authorizing signatures;
 - (c) any changes in authorizing signatures; and
 - (d) detail of disbursements from the accounts.

The new rule in every instance in which the words “New Mexico horsemen’s association” is used is changed to “associations”. Again, the change by definition eliminates the Horsemen and turns the money over to the very people it is feared and who in the past failed to care for it, that is turned over to the racetracks/casinos. The new rule eliminates the Horsemen from any oversight or care and attention to the gaming purse money. Furthermore, the New Mexico Racing Commission has indicated to the New Mexico Legislature the Commission does not audit the tracks.

The Horsemen objected to the administrative rule changes. The Horsemen have collected, managed, dispensed and disbursed the gaming tax purse monies at no cost to the State of New Mexico, to the taxpayers of the State of New Mexico, to the New Mexico Racing Commission or to the racetrack/casinos. The Horsemen have done a perfect job having lost not a single penny of the gaming tax purse

money and with every penny taken from the accounts approved in writing by the New Mexico Racing Commission through its Executive Director.

April, 2022: In April of 2022 Sunray Park & Casino refused to negotiate with the Horsemen regarding the simulcast contract and decided if the Horsemen did not succumb to their wishes each member of the Board of Directors of the Horsemen would be prohibited from participating in the 2022 meet at Sunray [ruled off]. Furthermore the actions of Sunray were in retaliation against the Horsemen for protesting the misuse of gaming purse monies and the action to “rule off” the Board members was an attempted extortive act. Despite a written plea to the New Mexico Racing Commission, the Commission allowed this. Litigation over the tortious and unconstitutional conduct of both Sunray and the New Mexico Racing Commission is pending.

July, 2022: Despite all the New Mexico Racing Commission’s and Gaming Board’s tactics, both continued to have the Horsemen collect, deposit, manage, dispense and disburse the millions of dollars of gaming purse monies and never refused to approve the Horsemen’s request to send requested purse monies as required to the racetrack/casino running a live racing meet that is until July, 2022 when this changed. In July, 2022 the New Mexico Racing Commission demanded all gaming purse monies be turned over to the respective racinos. The Horsemen had no choice but to turn over all of the gaming purse monies. For the first time since the enactment of the statute there is no watchdog to make certain the gaming purse monies are protected, the true amounts known, an accounting done and no misuse, embezzlement or theft takes place. The New Mexico Racing Commission despite IPRA requests refuses to disclose to the public the amounts of purse money each racino has.

July & August 2022: In July and August, 2022 the New Mexico Racing Commission decided to “unrecognize” [their words-not ours]. The Commission along with the racinos are attempting to make certain the Horsemen have no say over simulcast contracts. The Commission asked the New Mexico Horse Breeders Association to become the representative of the horsemen although most horsemen do not and cannot belong to the New Mexico Horse Breeders Association. The Breeders so far has refused. The motion to “unrecognize” the Horsemen was done to eliminate the Horsemen as the horsemen’s group which must give written consent, setting forth terms and conditions for interstate off-track wagering pursuant to *15 U.S.C.A. § 3004 Regulation of interstate off-track wagering*. The New Mexico Racing Commission lacks jurisdiction and authority thus the

Commission did not act in accordance with the law. The federal courts have made it clear the trade association or the horsemen's group which can negotiate the contracts is the one horsemen choose.

The New Mexico Racing Commission does not get to choose them! The Federal Court has stated,

"A racetrack that routinely negotiates racing contracts with horsemen's associations may not abandon this practice when contract negotiations stall because: Congress intended to preserve the traditional relationships between the parties in the horseracing industry; Congress intended that the horsemen play a significant role in limiting off-track wagering; and, it would severely curtail the horsemen's ability to protect their own interests." [emphasis mine] *Kentucky Div., Horsemen's Benev. & Protective Ass'n, Inc. v. Turfway Park Racing Ass'n, Inc.*, United States Court of Appeals, Sixth Circuit, April 6, 1994, 20 F.3d 140662 USLW 26461994 Fed.App. 0107P.

July 11, 2022: The New Mexico Horsemen's Association appeals and asks for Writ of Certiorari regarding the New Mexico Racing Commission's Motion and Decision to "Unrecognize" the Horsemen's Association.

September 9, 2022: Writ of Certiorari granted in the "unrecognize" appeal by the Horsemen of the decision of the New Mexico Racing Commission.

September 15, 2022: Hearing in the Declaratory Judgment Action on the Horsemen's Motion for Partial Summary Judgment

September 16, 2022- Letter from New Mexico Racing Commission to New Mexico Horse Breeders Association asking Breeders take over Horsemen's duties and responsibilities

September 20, 2022- Horsemen win partial motion for summary judgment the Court deciding the gaming purse money from the 20 % net income from the casinos can be used only for purses.

September 20, 2022- New Mexico Race Horse Breeders Association votes 11-0 not to accept being the horsemen's representative.

September 22, 2022: The New Mexico Racing Commission for the third time attempts to have the New Mexico Horse Breeders Association be recognized as the horsemen's group in New Mexico rather than the New Mexico Horsemen's Association.

September 23, 2022: District Judge Erin B. O’Connell of the Second Judicial District, State of New Mexico finds the NMRC in contempt and issues sanctions for failing to comply with the Order of Stay. The Horsemen are awarded attorney’s fees for the preparation of the Motion. Attorney for the Horsemen submits on September 24, 2022 a written order to counsel for the NMRC who refuses to sign the Horsemen’s order. The Horsemen submit the order to the Court on October 3, 2022 notifying the Court the NMRC has refused to sign and will submit their own order.

October 3, 2022: NMRC submits its proposed order to Judge O’Connell which the Horsemen object to and file on October 4, 2022, a written objection pointing out major problems with the proposed order submitted by the NMRC.

November 18, 2022: The Horsemen file in the United States District Court, District of New Mexico Initial Disclosures under Fed. R. Civ. P. Rule 26 (a) (1).

ⁱ The primary responsibilities of the **Horsemen** include:

- a. Keeping records of daily pari-mutuel handle for the purpose of purse money distribution at every New Mexico track;
- b. Maintaining separate bank accounts (the gaming accounts) for the **Horsemen’s** share of racino [common name used to refer to those racetracks with a casino attached] gaming machine revenue at each track and disbursing those funds to the tracks for payment of race purses;
- c. Maintaining and administering a medical benefit fund for the health and well-being of its members, utilizing statutory simulcast revenues for which the **Horsemen** serves as custodian, and supplemented with the **Horsemen’s** board-designated revenues.
- d. Participate and serve on the New Mexico Racing Commission’s “Medications and Rules” committees and be present at the general meetings of the racing commission to protect the interests of **Horsemen** members.
- e. Serving as a liaison between the **Horsemen**, track management and state regulatory authorities [which would include the New Mexico Gaming Control Board and the New Mexico Racing Commission].
- f. Negotiating written simulcast contracts between the horsemen and the racetrack/casinos known as racinos.

ⁱⁱ Economic Impacts of Racehouse Ownership, Breeding, and Training on New Mexico’s Economy by Jay M. Lillywhite and Mark Wise published by New Mexico State University April 2009 and Horse Racing in New Mexico: Economic Trends by David S. Dixon Department of Economics University of New Mexico September 15, 2022

ⁱⁱⁱ The **Horsemen** are the largest [with the most members in an association] advocacy group appearing before the **Commission** and the **Commissioners**. The **Horsemen** have no ownership interest in the individual racetracks, nor do the **Horsemen** exercise any control over the racetracks and/or the casinos [called racinos] associated with them.

^{iv}The membership of the **Horsemen** makes the following contributions to be a member:

- a. General Fund - 1% of all monies won in a horserace;
- b. Medical Fund - \$5 from each owner-member for each live racing start (designated by the Board of Directors for medical fund revenues); and
- c. PAC Fund - \$2 from each owner-member for each live racing start and restricted to the Political Action Committee (PAC) Fund for legislative activities.
- d.

In May, 2021 the New Mexico Racing Commission in retaliation against the New Mexico Horsemen's Association ordered those contributions cease. A stay of the Commission's Order was granted by a District Judge. The New Mexico Racing Commission has yet to comply, conspired with the New Mexico Gaming Control Board to continue to deprive the Horsemen of the contributions and then passed rules prohibiting the receipt of the contributions in the manner developed since 1966. The loss to the Horsemen now exceeds \$700,000.

^vThe primary statute that grants the majority of the purse money is *N. M. S. A. 1978, § 60-2E-47*. Said statute reads as follows:

N. M. S. A. 1978, § 60-2E-47
Gaming tax; imposition; administration

A. An excise tax is imposed on the privilege of engaging in gaming activities in the state. This tax shall be known as the "gaming tax".

B. The gaming tax is an amount equal to ten percent of the gross receipts of manufacturer licensees from the sale, lease or other transfer of gaming devices in or into the state, except receipts of a manufacturer from the sale, lease or other transfer to a licensed distributor for subsequent sale or lease may be excluded from gross receipts; ten percent of the gross receipts of distributor licensees from the sale, lease or other transfer of gaming devices in or into the state; ten percent of the net take of a gaming operator licensee that is a nonprofit organization; and twenty-six percent of the net take of every other gaming operator licensee. For the purposes of this section, "gross receipts" means the total amount of money or the value of other consideration received from selling, leasing or otherwise transferring gaming devices.

C. The gaming tax imposed on a licensee is in lieu of all state and local gross receipts taxes on that portion of the licensee's gross receipts attributable to gaming activities.

D. The gaming tax is to be paid on or before the fifteenth day of the month following the month in which the taxable event occurs. The gaming tax shall be administered and collected by the taxation and revenue department in cooperation with the board. The provisions of the Tax Administration Act apply to the collection and administration of the tax.

E. In addition to the gaming tax, a gaming operator licensee that is a racetrack shall pay twenty percent of its net take to purses to be distributed in accordance with rules adopted by the state racing commission. An amount not to exceed twenty percent of the interest earned on the balance of any fund consisting of money for purses distributed by racetrack gaming operator licensees pursuant to this subsection may be expended for the costs of administering the distributions. A racetrack gaming operator licensee shall spend no less than one-fourth percent of the net take of its gaming machines to fund or support programs for the treatment and assistance of compulsive gamblers.

F. A nonprofit gaming operator licensee shall distribute at least sixty percent of the balance of its net take, after payment of the gaming tax and any income taxes, for charitable or educational purposes. **[Emphasis mine]**

L. 1997, Ch. 190, § 49, eff. on approval of compact; L. 1998, Ch. 15, § 1, eff. March 5, 1998; L. 1999, Ch. 187, § 1; L. 2001, Ch. 256, § 1, eff. April 4, 2001; L. 2001, Ch. 262, § 3; L. 2002, Ch. 48, § 1, eff. March 4, 2002; L. 2005, Ch. 350, § 2, eff. July 1, 2005.

The *NMSA 1978 § 60-2E-47 (E)* funds are not considered revenue to the **Horsemen** because the **Horsemen** acted only in a custodial capacity: the funds were held in accounts maintained by the **Horsemen** until the New Mexico Racing Commission authorized distribution of the funds to the individual racetracks for payment of race purses.

^{vi}In a short summary, this is the way the procedure of collecting, accounting for, dispensing and disbursing the gaming purse money worked is:

- A. The casinos paid the “20%” net every week to the Horsemen.
- B. The Horsemen deposited the “20%” net in each account or accounts designated for a particular racetrack and the money for one track was not comingled with that of another.
- C. When a particular racetrack was running a live meet, that racetrack called for money to pay purses that were set according to a “condition book”. The request was in writing and in the last few years has been an email.
- D. Once an email was received, the Horsemen emailed the New Mexico Racing Commission and ask written permission to disburse and dispense the requested amount to the particular racetrack.
- E. Once written permission was received from the New Mexico Racing Commission, [typically a letter from the New Mexico Racing Commission sent via email] the Horsemen then paid to the particular racetrack the amount requested which was generally done electronically.
- F. The racetrack then paid, after the horse race was official, to the owners of the horses who ran in the race, the amounts due, depending on the finish of their horse in the race. It was at this time certain deductions the parties had all agreed on [the practice since 1966] were deducted from the amount the owner had earned from racing his, her or its horse. Those deductions were for the jockey’s fee, the costs of the photographer, if any, and the contributions the owner/Horsemen members made to the New Mexico Horsemen’s Association which is 1% of the amount won, a \$5.00 starters fee used for support of the health program of the Horsemen and \$2.00 for the PAC [lobbying fee].
- G. As required by law the PAC money is kept in a separate account by the Horsemen as is the health care fee [starter’s fee]. The 1% goes into the Horsemen’s general account and is used to pay the costs of collecting, managing, accounting, disbursing and dispensing the purse money from the “20%” net. The Horsemen use their own monies [received from contributions] to do the collecting, managing, accounting for, disbursing and dispensing. Excepting 20% of the interest earned on the purse money [a small and inadequate amount] the Horsemen receive no funding from any racetrack, state agency or taxpayer to do this work. Every year an independent audit was done. The Horsemen contributed millions of dollars to protect, manage and account for the gaming purse money.

^{vii}The **Horsemen** sought a New Mexico State District Court’s help to stop the wrongful taking of money [now over nine million dollars] by filing a declaratory judgment action in *Cause No. D-202-CV-2020-06564 filed in the County of Bernalillo, Second Judicial District, State of New Mexico*, filed December 2, 2020.

The New Mexico District Judge in *Cause No. D-202-CV-2020-06564 filed in the County of Bernalillo, Second Judicial District, State of New Mexico* has ruled in favor of the Horsemen declaring the *N. M. S. A. 1978, § 60-2E-47 E* money could be used only for purses.

On September 15, 2022, there was a hearing in the Declaratory Judgment Action on the Horsemen’s Motion for Partial Summary Judgment.

On September 20, 2022, Horsemen won a partial motion for summary judgment, the State District Court deciding the gaming purse money from the 20 % net income from the casinos can be used only for purses.

The **Commissioners** did allow and are still allowing racetracks/casinos to take money from “purse money” for “jockey insurance” despite a ruling from a New Mexico District Judge such was not in compliance with the statute, *N. M. S. A. 1978, § 60-2E-47E*.

^{viii}The **Horsemen**, for decades, routinely appeared before the New Mexico Racing **Commission** advocating for horsemen and horse racing, in fact, so often, the **Horsemen** were always on the agenda and gave a report. This was the practice until **Commissioner Sam Bregman** became Chairman of the **Commission** and curtailed this practice by its refusal to allow the **Horsemen** to appear, except through their attorney, or as individual horsemen. The **Commissioners** have directed and ordered its staff and Executive Director not to communicate with the **Horsemen**.

^{ix}The Commissioner’s attorney in a letter to the attorney for the New Mexico Horsemen’s Association states in relevant part the following:

“At this morning’s regular monthly meeting of the NMRC, the Commissioners brought forth and unanimously passed a motion impacting the New Mexico Horsemen’s Association and all five (5) horse racing tracks throughout New Mexico. Specifically, the motion unanimously passed by the NMRC is that the New Mexico Horsemen’s Association is to immediately discontinue the practice of requiring its membership to pay the 1% purse diversion, the \$5.00 Starter Fee and the \$2.00 PAC fee stemming from their participation in horseracing in New Mexico. The motion also is to instruct all five (5) racetracks to not provide those improper funds to the New Mexico Horsemen’s Association.”

“Therefore, please communicate this mandatory decision by the NMRC to the membership of the New Mexico Horsemen’s Association and advise its leadership that it needs to immediately begin taking action to stop all processes in place by which the 1% purse division, \$5.00 Starter Fee and \$2.00 PAC fee is collected. “

“A letter is being sent to all five (5) racetracks advising them of the NMRC decision and directing each of them to begin taking the necessary steps to ensure it no longer participates in any business practices which involves the improper diversion of purse money to the New Mexico Horsemen’s Association.”

The video/audio tape of the Commission meeting shows the Commissioners prohibiting the winners of or whose horses placed or ran in a horse race from contributing from the money they had won 1% of the amount won, the \$5.00 starter’s fee and the \$2.00 PAC fee to the New Mexico Horsemen’s Association.

The order was given without notice to the Horsemen, or an opportunity to be heard by the Horsemen.

^xThe order/decision/motion of the New Mexico Racing Commission is marked Exhibit ‘A’ and attached hereto and by reference thereto made a part hereof. Further, the Commission’s attorney, in a letter to the attorney for the New Mexico Horsemen’s Association, states in relevant part the following:

“At this morning’s regular monthly meeting of the NMRC, the Commissioners brought forth and unanimously passed a motion impacting the New Mexico Horsemen’s Association and all five (5) horse racing tracks throughout New Mexico. Specifically, the motion unanimously passed by the NMRC is that the New Mexico Horsemen’s Association is to immediately discontinue the practice of requiring its membership to pay the 1% purse diversion, the \$5.00 Starter Fee and the \$2.00 PAC fee stemming from their participation in horseracing in New Mexico. The motion also is to instruct all five (5)

racetracks to not provide those improper funds to the New Mexico Horsemen's Association."

"Therefore, please communicate this mandatory decision by the NMRC to the membership of the New Mexico Horsemen's Association and advise its leadership that it needs to immediately begin taking action to stop all processes in place by which the 1% purse division, \$5.00 Starter Fee and \$2.00 PAC fee is collected. "

"A letter is being sent to all five (5) racetracks advising them of the NMRC decision and directing each of them to begin taking the necessary steps to ensure it no longer participates in any business practices which involves the improper diversion of purse money to the New Mexico Horsemen's Association."

^{xi} On June 21, 2021, without complaint, charge, notice or warning to the **Horsemen**, without any due process, without a hearing or opportunity to be heard, Janice Y. Maniaci, Executive Director of the New Mexico Gaming Control Board, sent a letter to New Mexico Racetrack Gaming Operator Licensees directing all racetrack gaming licensees to cease any such practice of deducting any fees for the 20% gaming take that is to be only allocated to the horsemen race entrants pursuant to the Gaming Control Act, **NMSA 1978, Sec. 60-2E-47 (E)** and in conformance with the decision of the NMRC [New Mexico Racing Commission] dated May 20, 2021, and as set forth in the Order dated June 10, 2021.

The **Horsemen** take no money from the 20% gaming take except that allocated by *N. M. S. A. 1978, § 60-2E-47* which is 20% of the interest earned on the gaming take. In short, the Horsemen have statutory consent to take 20% of the interest earned on the monies. They take no other monies from that money. Now the **Commission**, the **Horsemen** argue wrongfully, have allowed/directed/ordered racetrack/casinos to take money for "jockey insurance and liability insurance". The amount is now over \$ 9 million dollars! Protesting the misuse of the "purse money" by the **Commission** has brought the wrath of the **Commission** upon the **Horsemen**. The current racing **Commissioners** have gone so far as to create a lie, falsehood, misrepresentation, fabrication claiming the **Horsemen** take part of the purse money for funding of their Association. The **Gaming Control Board** without proper investigation, hearing, notice or opportunity to be heard has fallen for the **Commission's** severe tactic of destroying the **Horsemen** by this false accusation.

^{xii}The **Horsemen** were not made aware of the letter by either the New Mexico Gaming Control Board or the New Mexico Racing Commission. The letter contained information it was mailed to the Horsemen but had not been received. A member of the New Mexico Legislature provided the Horsemen's Executive Director with a copy of the letter. At least one member of the New Mexico Legislature recognized the great injustice that is taking place.

It is suspected that by keeping the Horsemen in the dark, by not providing the Horsemen timely with the letter the provisions of *NM ADC 15.1.15.16 DEFAULT; PROCEDURE FOR RECOMMENDATION OF DEFAULT & 15.1.14.18 RECOMMENDED ACTION; FINAL DECISION*; would come into play and the **Horsemen** would forever be precluded from receiving the contributions from owners/Horsemen they are rightly entitled to because the **Horsemen** perfected no appeal. There are few appropriate words [excluding curse words] to describe the tactic being employed by the Commission/Commissioners against the Horsemen and now with the apparent consent of the Gaming Control Board. The Gaming Control Board did not meet to authorize the letter. No vote was taken. Minutes of the Gaming Control Board do not show any authorization voted on by the Board to do such.

^{xiii} The **Commissioners** made no arrangements for anyone else or for any payment for the bookkeeping and accounting work the **Horsemen** have been doing. The **Horsemen**, without recompense and/or contributions, continued doing the work of protecting the gaming purse money until June, 2022 when the Commission prohibited the Horsemen from doing such and demanded they turn over all purse money to the individual racinos which the Horsemen did to the penny.

In June of 2022, the Commission ordered the Horsemen release and transfer all gaming purse monies to the individual and particular racetracks. The Horsemen complied. It was a blatant move by the Commission to remove the Horsemen and have the racetracks/casinos collect, manage, account for, dispense and disburse the gaming purse monies. In short, the very safeguard of having the Horsemen guard, watch over and protect the gaming purse monies

from wrongful takings by the racetracks/casinos or others such as the Commission and Gaming Control Board are no longer present and that safeguard is removed. It is no small sum of money ranging from twenty to sixty million dollars per year.

Obtaining information as to deposits, withdrawals, disbursements, etc. will not happen. The rule changes by the Commission leave tens of millions of dollars, each year, unprotected. The Horsemen had no choice but to turn over all of the gaming purse monies.

For the first time since the enactment of the statute there is no watchdog to make certain the gaming purse monies are protected, the true amounts known, an accounting done and no misuse, embezzlement or theft takes place.

The New Mexico Racing Commission despite IPRA requests refuses to disclose to the public the amounts of purse money each racino has.

^{xiv}Lost contributions: Plaintiff has the following actual damages/loss of contributions as calculated based on information received from official amounts paid in winnings to owners of race horses. Plaintiff's actual total lost contributions will be determined by the court after consideration of all evidence, accounting and calculations.

DATE	TRACK	1%	STATER FEE	PAC	TOTAL
2021					
Never Received					
5/14/2021	SRP	\$ 2,752.77	\$ 390.00	\$ 152.00	\$ 3,294.77
5/15/2021	SRP	\$ 1,953.49	\$ 425.00	\$ 154.00	\$ 2,532.49
5/16/2021	SRP	\$ 1,987.36	\$ 375.00	\$ 144.00	\$ 2,506.36
Total		\$ 6,693.62	\$ 1,190.00	\$ 450.00	\$ 8,333.62
5/21-5/30-21	SRP	\$ 13,847.00	\$ 2,610.00	\$ 1,044.00	\$ 17,501.00
Grand Total		\$ 20,540.62	\$ 3,800.00	\$ 1,494.00	\$ 25,834.62
Before 8/6/21	RUI	\$ 45,479.62	\$ 18,030.00	\$ 7,186.00	\$ 70,695.62
Day 1 -31					
Total		\$ 45,479.62	\$ 18,030.00	\$ 7,186.00	\$ 70,695.62
8/6/2021	RUI	\$ 23,493.50	\$ 6,995.00	\$ 2,798.00	\$ 33,286.50
Day 32-46					
	DAA	\$ 65,859.50	\$ 10,140.00	\$ 4,056.00	\$ 80,055.50

Day 1 -36	ZIA	\$ 90,691.50	\$ 15,585.00	\$ 6,234.00	\$ 112,510.50
Grand Total		\$ 180,044.50	\$ 32,720.00	\$ 13,088.00	\$ 225,852.50
after 8/6/21					
2022					
Day 1-55	SUN	\$ 121,997.25	\$ 21,200.00	\$ 8,562.50	\$ 151,759.75
Day 1-18	SRP	\$ 55,444.55	\$ 8,070.00	\$ 3,228.00	\$ 66,742.55
Day1-47	RUI	\$ 50,562.95	\$ 21,655.00	\$ 8,662.00	\$ 80,879.95
Day 1-38	DAA/NMSF	\$ 89,330.00	\$ 15,535.00	\$ 6,214.00	\$ 111,079.00
Day 1-27	ZIA	\$ 63,958.45	\$ 10,680.00	\$ 4,272.00	\$ 78,910.45
Grand Total		\$ 381,293.20	\$ 77,140.00	\$ 30,938.50	\$ 489,371.70
Totals from 8/6/21 to 11/15/22		\$ 561,337.70	\$ 109,860.00	\$ 44,026.50	\$ 715,224.20
Zia Park stopped sending .5% from simulcast on w/o 8/8/22		\$ 4,853.46			

^{xv}*NMSA 60-1A-16 states:*

Effective: July 1, 2007
N. M. S. A. 1978, § 60-1A-16
§ Simulcasting

A. All simulcasting of horse races shall have prior approval of the commission, and the commission shall adopt rules concerning the simulcasting of horse races as provided in this section.

B. A racetrack licensee shall not be allowed to simulcast horse races unless that racetrack licensee offers at least seventeen days per year of pari-mutuel wagering on live horse races run on the premises of the racetrack licensee.

C. The commission may permit exporting of a horse race being run by a racetrack licensee to another racetrack licensee within New Mexico or exporting of a horse race from a racetrack licensee to another location holding a pari-mutuel or gaming license that allows simulcasting of a horse race from outside of the state or jurisdiction that licenses that out-of-state facility.

D. The commission may permit importing by a racetrack licensee of horse races that are being run at racetracks outside of the state licensed by a host state.

E. Pari-mutuel wagering on simulcast horse races shall be prohibited except on the licensed premises of a racetrack licensee during the licensee's race meet at the horse racetrack or when the racetrack licensee is importing a race meet from another New Mexico-licensed horse racetrack.

F. A New Mexico-licensed horse racetrack that is within a radius of eighty miles of any other New Mexico-licensed horse racetrack with a race meet in progress may only conduct pari-mutuel wagering on imported horse races if there is a written agreement between the two racetrack licensees allowing pari-mutuel wagering on imported horse races during the period of time that the live horse races are taking place. [Emphasis mine]

The **Horsemen** objected to the interference by the **Commissioners** with the **Horsemen's** simulcasting agreements in which the **Commissioners** have attempted to allow simulcasting without the agreement of the **Horsemen** in violation of the *Interstate Horseracing Act 15 U.S.C.A. § 3001 et. seq.* Racetracks outside the State of New Mexico refused to allow simulcasting without the written agreement with the **Horsemen**.

^{xvi}The **Horsemen** also objected to the **Commission** shortening race meets and/or canceling them completely which is in violation of *N. M. S. A. 1978, § 60-2E-27 and 60-1A-16*. Again the **Gaming Control Board** has taken no action. For example, with the Governor opening the State up from the Covid 19 pandemic July 1, 2021, the Commission still allowed the State Fair to not race and the Downs at Albuquerque to shorten the meet which takes place at Albuquerque either via the State Fair or Albuquerque Downs. It is expected the **Commission** is going to continue to allow racetracks to shorten meets by reducing the number of race days and/or number of races per day. *NMSA 1978 § 60-2E-27* states:

Effective: June 16, 2017

N. M. S. A. 1978, § 60-2E-27

§ 60-2E-27. Gaming operator licensees; special conditions for racetracks; number of gaming machines; days and hours of operations

Currentness

A. A racetrack licensed by the state racing commission pursuant to the Horse Racing Act to conduct live horse races or simulcast races may be issued a gaming operator's license to operate gaming machines on its premises where live racing is conducted.

B. A racetrack's gaming operator's license shall automatically become void if:

(1) the racetrack no longer holds an active license to conduct pari-mutuel wagering;

(2) the racetrack paid gaming tax to the state on its net take in an amount greater than eight million dollars (\$8,000,000) in the prior fiscal year pursuant to Section 60-2E-47 NMSA 1978 and fails to maintain a minimum of four live race days a week with at least nine live races on each race day during its licensed race meet, except as provided in Subsection F of this section; or

(3) the racetrack paid gaming tax to the state on its net take in an amount equal to eight million dollars (\$8,000,000) or less in the prior fiscal year pursuant to Section 60-2E-47 NMSA 1978 and fails to maintain a minimum of three live race days a week with at least ten live races on each day during its licensed race meets, except as provided in Subsection F of this section.

C. Unless a larger number is allowed pursuant to Subsection D of this section, a gaming operator licensee that is a racetrack may have up to six hundred licensed gaming machines.

D. By execution of an allocation agreement, signed by both the allocating racetrack and the racetrack to which the allocation is made, a gaming operator licensee that is a racetrack may allocate any number of its authorized gaming machines to another gaming operator licensee that is

a racetrack. To be valid, the allocation agreement must bear the written approval of the board and the state racing commission, and this approval shall make specific reference to the meeting at which the action of approval was taken and the number of votes cast both for and against the approval. By allocating a number of its authorized machines to another racetrack, the allocating racetrack automatically surrenders all rights to operate the number of machines allocated. No racetrack shall operate or be authorized to operate more than seven hundred fifty gaming machines.

E. Gaming machines on a racetrack gaming operator licensee's premises may be played only on days when the racetrack is either conducting live horse races or simulcasting horse race meets. On days when gaming machines are permitted to be operated, a racetrack gaming operator licensee may offer gaming machines for operation for up to eighteen hours per day; provided that the total number of hours in which gaming machines are operated does not exceed one hundred twelve hours in a one-week period beginning on Tuesday at 8:00 a.m. and ending at 8:00 a.m. on the following Tuesday. A racetrack gaming operator licensee may offer gaming machines for play at any time during a day; provided that the total hours of operation in each day from just after midnight of the previous day until midnight of the current day does not exceed eighteen hours. A racetrack gaming operator licensee shall determine, within the limitations imposed by this subsection, the hours it will offer gaming machines for operation each day and shall notify the board in writing of those hours.

F. Maintaining fewer live race days or fewer live races on each race day during a licensed race meet does not constitute a failure to maintain the minimum number of live race days or races as required by Paragraphs (2) and (3) of Subsection B of this section if the licensee submits to the board written approval by the state racing commission for the licensee to vary the minimum number of live race days or races, and the variance is due to:

(1) the inability of a racetrack gaming operator licensee to fill races as published in the licensee's condition book as long as the same type of canceled race is run within the following two race weeks as the race season permits;

(2) severe weather or other act, event or occurrence resulting from natural forces;

(3) a strike or work stoppage by jockeys or other persons necessary to conduct a race or meet;

(4) a power outage, electrical failure or failure or unavailability of any equipment or supplies necessary to conduct a race or meet;

(5) hazardous conditions or other threats to the public health or safety; or

(6) any other act, event or occurrence that the board finds is not within the control of the licensee even with the exercise of reasonable diligence or care.

G. Alcoholic beverages shall not be sold, served, delivered or consumed in the area restricted pursuant to Subsection F of Section 60-2E-26 NMSA 1978.

[Emphasis mine]

^{xvii}HISA is the Horseracing Integrity and Safety Authority federal law signed into law in 2020. HISA is responsible for drafting and enforcing uniform safety and integrity rules in thoroughbred racing in the United States. It is overseen by the Federal Trade Commission. A United States Court of Appeals Fifth Circuit has recently declared it unconstitutional.