

May 12, 2023

Statement from James L. Gagliano, president and chief operating officer, in Support of HISA

It has been increasingly difficult to watch as the opponents of the Horseracing Integrity and Safety Act of 2020 (HISA) continue to ramp up their campaign to see it derailed. Much like throwing spaghetti against the wall to see what sticks, they continue to pitch mistruths and diversions and file myriad lawsuits across the nation in an attempt to get something to stick in the minds of lawmakers, judges, and policymakers.

I would like to set the record straight about HISA and to comment on its opponents' most recent actions.

Over the past months these opponents, principally the National Horsemen's Benevolent and Protective Association (NHBPA) and a handful of state racing commissions have trafficked in a series of mistruths and fabrications to try to hoodwink members of the racing industry and the public to oppose HISA. All this is underwritten by a couple of unrelated, agenda driven, special interest activist groups, which have zero involvement in our sport and have no interest in its long-term viability.

They have argued that HISA was passed in the "middle of the night" in 2020. It wasn't. Its first form of a bill was introduced in 2015 and re-introduced in 2017 and 2019, it received hearings in Congress, was carried forward by a House Committee in 2020, and was, in September that year, passed unanimously by the House of Representatives as a stand-alone piece of legislation. A month later it was passed by the Senate as part of a larger bill, due to the expiring legislative session.

Opponents also claim to not have had input into HISA. Nonsense. As someone fully involved in the development of HISA, I can attest to the countless times horsemen's groups and racing commissioners, specifically, met with backers of the bill and its original sponsors. In fact, I recall flying leadership of the NHBPA to Colorado Springs to meet and discuss the bill. I'll foreshadow the rest of this essay by sharing that at that time counsel for the NHPBA said their most significant concern was including anything in a bill that would open the Interstate Horseracing Act of 1978 (IHA) to any form of amendment or tampering. We've spoken with them in closed rooms and debated them in public for years – but somehow, they were "never included."

Against this background of spin and untruths, the opponents have become serial litigators: they have filed six federal lawsuits across the nation – making redundant claims in each – in an effort to find the "right" federal appeals court to find HISA unconstitutional.

Thus far, the opponents have failed in the U.S. Sixth Circuit, which in a comprehensive and well-reasoned opinion found HISA to be constitutional. Last week, they failed again when a federal district court in Texas issued another extensive opinion finding HISA constitutional. The opponents are going to take another shot at it with the U.S. Fifth Circuit Court now that the court's earlier decision on HISA has been made moot by way of a legislative amendment in December. Not being content with these bites at the apple, opponents have recently filed additional nearly identical lawsuits within two other federal circuit court jurisdictions.

While helping plaintiff's lawyers live their dreams, the HISA opponents expend great energy complaining about how much HISA might cost. While assessments will continue to be fine-tuned – one thing is for sure, they are driving up the industry's expenses by continuing to sue with no end in sight.

All this brings us to this past week. Once again, the challenges facing our athletes and our industry have come to the forefront – directly to a national audience at the time of our sport's biggest event. Following the unfortunate equine fatalities at Churchill Downs, and the massive national media attention it garnered, opponents of HISA have chosen not to get behind a collective effort to solve these issues but, instead, to break down the industry's best hope for ensuring horse safety and industry integrity. Early this week, they continued

their scorched earth efforts to derail HISA in favor of maintaining the status quo by immediately seeking an injunction against the rollout of the HISA anti-doping and medication control program on May 22. This, despite the fact that the very same court they are asking for the injunction just found HISA to be constitutional.

These injunctions take a toll. One judge delayed HISA's implementation of its medication program by a month, making it impossible to begin before Derby week. HISA will not be fully implemented until later this month now, due to the NHBPA. Would a unified, independent medication and track safety program have made a difference? Thanks to the NHBPA, we will never know.

Most organizations would have kept a low profile after such an embarrassment. Not the NHBPA, they doubled down. They got their few supporters in Congress to prepare legislation that would immediately repeal HISA and offer the illusion of a state compact-based regulatory model. The draft legislation would enable states to choose to keep the current state-by-state regulatory approach or create a regulator whose board of directors would be hand-picked by state commissions – under rules that specifically allow the directors to have conflicts of interests. The medication regulation by compact regulatory model is a recycled version of an idea first trotted out by the Association of Racing Commissioners International in 2010 and which has continued to be touted by opponents to HISA since. Obviously, it hasn't worked yet, and it will not work in the future.

Further, this trojan horse of a bill takes a carrot and stick approach that would put simulcast wagering across the U.S. at risk of an immediate and summary cessation. Under this bill, if two states enter into a compact to create the conflicted new regulatory body ALL other states would be forbidden from simulcasting until they enter into the compact as well. As I foreshadowed earlier, NHBPA's lawyer told us years ago that anything touching the IHA was an absolute no-go for them – now that they are blinded by their hate for HISA, they seemingly no longer care. This “we have to destroy the industry to (possibly) save it” approach is an absolute affront to everyone in our industry – those who support HISA and those who do not.

The horses that perished last week have recent racing histories within numerous states for which there is no single regulator that has the ability to conduct complete cross-border investigations. HISA changes this dynamic. Under the HISA opponents' preferred approach, each state is an investigatory island, limited to inquiries within their own borders. One would think that the NHBPA would want the fullest possible investigations in support of their members who lost horses – and to avoid the same things happening to other horses in the future. They focus instead on hobbling HISA while leaving their constituents and our equine and human athletes at continued risk.

I've spent every living moment of my professional life working in this industry, in many roles, including at some of the smallest tracks and the largest. It's a sport I have loved since I was a child, and it remains with deep roots among my friends and family. Racing safety and integrity are matters concerning everyone at all levels of the game – and to so many outside of it. Who among us in the sport didn't hear over the last few days: “What's going on with horse racing?” and “What can be done to fix it?” The answer is clear: HISA.

Unlike what the opponents of HISA are peddling, the industry should embrace the opportunity to safeguard our horses and our game by moving forward with HISA, not taking a trip backward to the tired and worn-out programs of the past.