

To: Minnesota Senate State and Local Government and Veterans Committee
Re: S.F. 5354
Date: April 8, 2024

My name is Tom DiPasquale. I was Executive Director of the Minnesota Racing Commission from 2013-2020 and served under both Governors Dayton and Walz.

During my tenure, the MRC had a cooperative and productive relationship with the Legislature and Governor's office. We passed three major reform bills that put MRC's operating budget on a sustainable path, provided dedicated funding for racehorse aftercare, and enhanced purses at both tracks. We passed rules that kept Minnesota racing on the leading edge of safety and integrity.

SF 5354 represents a dramatic shift away from that cooperative spirit. Its purpose and effect is nothing less than an intentional effort to deal a punishing blow to the racing industry and the thousands of people whose livelihoods depend on it by suddenly changing laws that have been in place for decades and which were expressly intended to ensure the vitality of Minnesota's horse racing industry.

SF 5354 seeks to redefine card playing in a way that serves that punitive intent. In a 2013 Minnesota Court of Appeal decision, the Court, citing the language of Chapter 240, said that "card playing is an activity where players wager utilizing **a 52-unit system.**" The Court said that "the definition of card playing (under Ch 240) does not require physical cards but rather uses the term "units". And, the Court went on, card playing does not even require a dealer, though MRC has required the tracks to play only dealer games.

It was in light of that prior Court of Appeals ruling, the plain language of the statute, and additional legal research that, after several public hearings, the MRC approved dealer-assist Blackjack, the card game which SF 5354 now seeks— seven years later— to make illegal.

The Mdewakanton tribe raised concerns with this card game in late 2018 in a letter to Governor Dayton, but after reviewing the facts, the Governor's

office was satisfied that the MRC had acted consistently with the laws governing card games.

Fast forward to early 2024. Running Aces made a routine request to add five player seats across three card room tables—a decision so routine that it has been delegated by the Commission to the Executive Director for many years. The Mdewakanton tribe requested consultation due to what it claimed would be a substantial direct adverse economic impact by the addition of the five player seats. The Commission agreed to the tribe's request, whereupon the tribe sent 13 people, including three lawyers and two lobbyists, to meet with the MRC's Chair and Executive Director. Following the consultation, the MRC voted unanimously to approve the request. Within days, the tribe sued the State of Minnesota and the MRC.

So, instead of allowing the Court to decide this pending case on the merits, SF 5354 and its companion bill, HF 5274, seek to resolve the matter *sua sponte* in favor of the tribes. This isn't what Legislators are supposed to do—exercise their raw power to preempt the judicial process. These bills undermine the State of Minnesota's own sovereign interests in supporting decisions of its executive branch agencies and, when those decisions are challenged by aggrieved parties, to allow the State's judicial processes to run their course without Legislative interference.

SF 5354 also seeks to impose a new definition of card playing, stepping in to prescribe how cards are to be dealt, how many players can play, and more...all of this without any consideration of the consequences these changes will have for the racing industry or for card room plans of operation which have been approved by the MRC in reliance on laws that have been in place since 1999.

I'd like to turn now to the new definition of "pari-mutuel betting" in SF 5354. The bill's language requires that a pari-mutuel wager be made "on a single horse race." This would effectively eliminate the types of wagers that make up a large share of pari-mutuel wagering in this state and every other state, that is, multi-race wagers such as the daily double, Pick 3, Pick 4, Pick 5 and Pick 6. These wagers are analogous to parlay bets in sports betting. I'd like to believe this change is due to a lack of understanding about horse racing rather than an attempt to make illegal the lion's share of wagering on horse racing.

Finally, I'd like to comment on the bill's preemptive outlawing of historical horse racing (HHR). This form of pari-mutuel wagering has been under consideration by the MRC at various times since I was appointed in 2013. In fact, my successor, Steve May, was the nation's leading expert on HHR and is now employed by Gaming Laboratories, which provided expert testimony at the recent MRC hearing on HHR. After hearing several hours of testimony from legal and subject matter experts, including those representing the tribes, the MRC determined the weight of evidence supported *a particular version* of HHR that was consistent with Minnesota laws.

As the Court of Appeals said in its 2013 opinion that I cited above, MRC has the exclusive power to regulate under Ch 240. It may seek assistance from another agency, as it did in this instance from AGED, but, in the Court's words, "AGED's opinion is not entitled to deference because it was not the result of formal rule making or adjudication."

In the recent MRC meeting approving a version of HHR, the MRC exercised its own expertise and independent judgment based on a complete hearing record. It was not obligated to, nor should it, rubber stamp another agency's opinion.

The proper route to challenge the MRC's decision under Minn. Stat. 240.20 is by filing a writ with the Court of Appeals, just as was done by the tribes in their challenge to the player seats decision. Instead, SF 5354 again seeks to subvert that process by having the Legislature decide the matter without regard to the merits and without regard to its lack of expertise on the subject. I suspect most Committee members would acknowledge they know little about HHR in general or the particulars of the request that was the subject of the MRC's decision.

All of this suggests to me that SF 5354 is a retaliatory measure aimed at preempting the MRC's authority and bringing the racing industry to heel to ensure that it will not remain a vital competitor to the grant of a tribal sports betting monopoly.

I urge you to oppose this bill for the reasons set forth.

Thank you.
Tom DiPasquale