

IN THE NEW MEXICO SUPREME COURT

BRAD BOLEN,

Petitioner-Appellee,

v.

Case No. S-1-SC-40427

NEW MEXICO RACING COMMISSION,  
And FABIAN LOPEZ, records custodian  
for NMRC,

Respondent-Appellant.

---

NEW MEXICO RACING COMMISSION'S  
ANSWER BRIEF

---

Appeal from the Second Judicial District Court  
The Honorable Joshua Allison  
District Court Cause No. D-202-CV-2021-06917  
Court of Appeals No. A-1-CA-41120

Eric Loman  
JACKSON LOMAN DOWNEY &  
STEVENS-BLOCK, P.C.  
201 3<sup>RD</sup> St. NW #1500  
Albuquerque, NM 87102  
(505) 767-0577  
eric@JacksonLomanLaw.com  
Attorneys for Respondent-  
Appellant

**Table of Contents**

Table of Authorities .....	ii
Introduction .....	1
Argument .....	4
I.    Quasi-Judicial Immunity Is Absolute And Well-Established In New Mexico .....	4
II.   The CRA Preserves Quasi-Judicial Immunity .....	9
III.  Public Bodies Are Vicariously Immune For Immunized Acts Of Their Employees .....	11
IV.  Mr. Bolen Seeks An Absurd Result .....	12
Conclusion .....	14
Statement of Compliance .....	16
Certificate of Service .....	16

**Table Of Authorities**

New Mexico Statutes

New Mexico Civil Rights Act, N.M.S.A. § 41-4A-1, *et seq.* ..... 9, *passim*  
Horse Racing Act, N.M.S.A. § 61-1A-1, 4 ..... 1

Other Statutes

42 U.S.C. § 1983 ..... 7

New Mexico Regulations

16.47.1.8(L)(1)(i) NMAC ..... 1

Regulations Of Other States

4 CCR § 1874 ..... 1  
810 KAR 3:020(x)-(y) ..... 1

New Mexico Rules of Civil Procedure

Rule 1-075 NMRA ..... 7, 13

New Mexico Case Authority

*Am. Fed'n of State, Cnty & Mun. Emps v. City of Albuquerque*,  
2013-NMCA-063, 304 P.3d 433 ..... 10

*Bolen v. N.M. Racing Comm'n*, 2024-NMCA-056 ..... 4

*City of Albuquerque v. Chavez*, 1997-NMCA-054, 123 N.M. 428.. 7

*Collins on Behalf of Collins v. Tabet*, 1991-NMSC-013,  
111 N.M. 391 ..... 8

*Edwards v. Wiley*, 1962-NMSC-116, 70 N.M. 400 ..... 5

*Gregory Rockhouse Ranch, LLC v. Glenn's Water Well Serv.*,  
2008-NMCA-101, 144 N.M. 690 ..... 7

<i>Hern v. Crist</i> , 1987-NMCA-019, 105 N.M. 645 .....	3
<i>J.V. on behalf of C.V. v. Brooks</i> , No. A-1-CA-36350, 2020 WL 2126792 (N.M. Ct. App. May 4, 2020)(unpublished) ....	11
<i>State ex rel. Helman v. Gallegos</i> , 1994-NMSC-023, 117 N.M. 346 ..	13
<i>State v. Jackson</i> , 2010-NMSC-032, 148 N.M. 452 .....	10
<i>State v. Montano</i> , 2020-NMSC-009, 468 P.3d 838 .....	10
 <u>Cases From Other Jurisdictions</u>	
<i>Bertat v. Sch. Dist. No. 1, Albany Cnty, Wyo.</i> , 613 F.2d 245 (10 <sup>th</sup> Cir. 1979) .....	10
<i>Chaney v. McBride</i> , No. 3:13-CV-02246-AKK, 2014 WL 3566312 (N.D. Ala. July 18, 2014) .....	12
<i>Butz v. Economou</i> , 438 U.S. 478 (1978) .....	5, <i>passim</i>
<i>Darrar v. Bourke</i> , 910 P.2d 572 (Wyo. 1996) .....	12
<i>Harlow v. Fitzgerald</i> , 457 U.S. 800 (1982) .....	8
<i>Horwitz v. State Bd. Of Medical Examiners</i> , 822 F.2d 1508 (10 <sup>th</sup> Cir. 1987) .....	6,
<i>Saavedra v. City of Albuquerque</i> , 73 F.3d 1525 (10 <sup>th</sup> Cir. 1996)..	7
<i>Thatcher v. Faleafine</i> , No. 17-CV-168-SWS, 2020 WL 13565179 (D. Wyo. June 26, 2020) .....	12
<i>Young v. City of Council Bluffs, Iowa</i> , 569 F. Supp. 3d 885 (S.D. Iowa 2021) .....	12

## Introduction

New Mexico Racing Commission (“NMRC”) is the agency created by the Horse Racing Act (“Act”) to regulate the sport and industry of racing. See N.M.S.A., § 60-1A-1 *et seq.* NMRC is required to adopt rules and regulations with respect to racing. N.M.S.A. 60-1A-4(B)(1). Pursuant to the Act, any person wishing to engage in horseracing may do so only if licensed by the New Mexico Racing Commission (“NMRC”) and is subject to the applicable licensing regulations. Brad Bolen is one such licensee and works as a horse trainer. See Complaint, RP- 1. <sup>1</sup>

In July 2021, Mr. Bolen got into an argument with a racing steward<sup>2</sup> over whether Mr. Bolen’s assistant’s license would be reinstated after a lengthy suspension. See Memorandum Opinion and Order, RP-384. NMRC may take disciplinary measures where a licensee engages in “disruptive or intemperate behavior” or “interferes with the orderly conduct of a race meeting.” See 16.47.1.8(L)(1)(i) (the “Rule”).<sup>3</sup>

---

<sup>1</sup> The Record Proper is cited herein as RP- \_\_\_\_.

<sup>2</sup> Racing stewards are employed by NMRC and serve as rules officials at the racetrack. They are similar to referees in other sports.

<sup>3</sup> New Mexico is not unique in regulating the behavior of its horse racing licensees. For example, California’s racing regulations prohibit its licensees from engaging in “abusive or aggressive behavior..., any behavior that impedes others from performing their duties; and/or any other behavior that is detrimental to the public and racing.” See 4 CCR § 1874. Kentucky prohibits its horse racing licensees from engaging in “any conduct of a disorderly nature,” including failing to “obey the stewards’ or judges’ or other official’s orders”, “offensive and profane language” or disturbing the peace, which includes using “abusive or insulting language to or interfere with a commission member, employee or agent, or racing official.” See 810 KAR 3:020(x)-(y).

Based on Mr. Bolen's behavior during that argument, NMRC initiated an administrative disciplinary proceeding against Mr. Bolen. See Defendant's Motion for Summary Judgment. RP 269.

The first level of administrative review is a hearing before a panel of three stewards. *Id.* RP-269. At the conclusion of that hearing the stewards issued an Initial Ruling finding Mr. Bolen had violated the Rule and issued a \$500 fine, which was immediately waived and would be completely abated should he have no violations for a period of one year. *Id.* RP-270.

At the same time the administrative process was underway, Mr. Bolen filed this lawsuit. Compare, Compl., RP-1 (filed December 10, 2021) and NMRC Appeal Request, RP-278 (filed January 3, 2022).

As was his right, Mr. Bolen appealed the Initial Ruling and sought a hearing before an independent hearing officer. *Id.* RP-270. That hearing was scheduled, but on April 14, 2022- before the hearing occurred, and on advice of counsel- Mr. Bolen withdrew his appeal of the Initial Ruling, choosing only to pursue this litigation. *Id.* RP-270, 288.

Mr. Bolen sued NMRC under the Civil Rights Act claiming the administrative proceeding was a "malicious prosecution" in retaliation for his exercise of speech during his argument with the Steward and a violation of his liberty interests. See,

generally Complaint, RP-1-12. Mr. Bolen claims NMRC “initiat[ed] and continu[ed] a vindictive prosecution against Mr. Bolen...” *Id.*, RP-4.

NMRC moved the District Court for summary judgment on Mr. Bolen’s claim as NMRC has absolute quasi-judicial immunity from suit for its decision to initiate and prosecute an administrative proceeding. See, generally, Motion for Summary Judgment, RP 268-296.<sup>4</sup> The District Court found both quasi-judicial and prosecutorial immunities could apply. *Id.*, RP-389. But the District Court denied these immunities to NMRC, finding they only apply to individual public officials and NMRC, as a public agency, cannot be immune. *Id.* The District Court summarized its ruling:

“Plaintiff here has named only the [NMRC] as the Defendant and is not seeking any personal liability against any commissioner, employee, or agent of [NMRC]. Thus, the quasi-judicial/adjudicator and prosecutorial immunities that would otherwise shield individuals from being personally liable for damages under Section 1983 are inapplicable. The [NMRC] is therefore not immune from suit.”

*Id.*, RP 390.

---

<sup>4</sup> At footnote 1, the Brief-in-Chief states that immunity was not pled as an affirmative defense in NMRC’s Answer to the Complaint. The Brief-in-Chief also correctly notes waiver was never raised or argued at the District Court or Court of Appeals, and is therefore not before this Court. However, NMRC notes that in *Hern v. Crist*, 1987-NMCA-019, ¶ 12, 105 N.M. 645, the Court held “while we deem it preferable practice for the immunity defense to be raised as an affirmative defense or by way of a motion to dismiss, a failure to affirmatively plead this defense does not amount to a waiver... The claim of immunity may also be raised for the first time even upon appeal.”

To clarify, NMRC raised its immunity defense in a Motion for Summary Judgment in the early stages of the case. See RP- 268-296.

The Court of Appeals reversed the District Court and made two holdings: (1) that the immunities described in Section 10 of the CRA protect public bodies, and (2) that NMRC has quasi-judicial immunity under the particular facts of this case. See *Bolen v. N.M. Racing Comm'n*, 2024-NMCA-056, ¶¶ 8, 13. Mr. Bolen seeks review on only the first issue: whether, as a general proposition, “judicial immunity [is] a defense available to public bodies sued under the [CRA].” See Petition for Writ of Certiorari, p. 2, and Brief-in-Chief, p. 14.

### **Argument**

Although it waives sovereign and qualified immunity, the CRA expressly preserves judicial immunity and any other immunity rooted in statute or common law. That immunity must apply to public bodies because individual public officials may not be sued pursuant to the CRA. As demonstrated below, any other interpretation of the CRA would lead to an absurd result, inconsistent with centuries of jurisprudence.

#### **I. Quasi-Judicial Immunity Is Absolute and Well-Established in New Mexico.**

The doctrine of judicial immunity has provided New Mexico’s judges with absolute immunity from civil suit for a very long time. As this Court noted in 1962, “[i]t is not the policy of the law to subject courts of either limited or general jurisdiction to actions for damages, while acting within their jurisdiction, even though the judicial act be erroneous and not in good faith.” *Edwards v. Wiley*, 1962-

NMSC-116, ¶ 7, 70 N.M. 400, 402, 374 P.2d 284, 285 (internal citation omitted). A “judge is simply not civilly responsible in damages for his errors or mistakes. As to this the law has been well settled.” *Id.*, ¶ 8.

This Court noted “the following... expresses the almost unanimous opinion of the courts, not only of this country but of England, on the subject:

“It is unquestionable, and has been from the earliest days of the common law, that a judicial officer cannot be called to account in a civil action for his determinations and acts in his judicial capacity, however erroneous or by whatever motives prompted. The rule of immunity extends to all classes of courts and applies to the highest judge of the nation and to the lowest officer who sits as a court and tries petty cases.”

*Id.*, ¶ 9 (internal citation omitted).

It is also well settled that judicial immunity extends to quasi-judicial bodies. In 1978, the U.S. Supreme Court declared administrative officials are absolutely immune from suit where they were performing quasi-judicial functions. *See, Butz v. Economou*, 438 U.S. 478 (1978). The plaintiff in *Butz* filed suit against various government officials “claiming that they had instituted an investigation and an administrative proceeding against him in retaliation for his criticism of that agency.” *Id.* at 480.

The Court held “agency officials must make the decision to move forward with an administrative proceeding free from intimidation or harassment.” *Id.* at 516.

The Court noted a respondent in an administrative proceeding has ample

safeguards against “agency zeal,” including various levels of appeal and administrative review and the availability of an independent hearing officer. *Id.* at 514. The Court held, because of these safeguards, “the risk of an unconstitutional act by one presiding at an agency hearing is clearly outweighed by the importance of preserving the independent judgment of these men and women.” *Id.*

The Court applied the same analysis to those agency officials who initiate and prosecute administrative actions. *Id.* at 515 (“We also believe that agency officials performing certain functions analogous to those of a prosecutor should be able to claim absolute immunity with respect to such acts.”). The Court then recognized the risk (and predicted what happened in the instant case) that an “individual targeted by an administrative proceeding will react angrily and may seek vengeance in the courts.” *Id.*

The absolute immunity for administrative officials described in *Butz* has been consistently recognized through the decades, including by the Tenth Circuit. In *Horwitz v. State Bd. of Medical Examiners* 822 F.2d 1508 (10th Cir. 1987), the Tenth Circuit followed *Butz* and dismissed a physician’s lawsuit who claimed the Board of Medical Examiners had initiated “unfounded complaints [and] summarily suspended from the practice of podiatry in violation of his Fourteenth Amendment due process rights...” *Id.* at 1510. The Tenth Circuit reiterated that administrative officials who initiate, prosecute and preside over administrative proceedings enjoy

absolute immunity, and further extended that absolute immunity to the members of the administrative body itself. *Id.* 1515-1516. The Tenth Circuit further noted Colorado law provided safeguards against administrative overreach, such as various levels of administrative review and appeal rights. *Id.*<sup>5</sup>

New Mexico Courts have adopted this federal jurisprudence, recognizing the immunity provided to administrative officials in *Butz* and its progeny. See *City of Albuquerque v. Chavez*, 123 N.M. 428, 1997-NMCA-054, ¶ 17 (citing *Butz* and *Saavedra v. City of Albuquerque*, 73 F.3d 1525 (10th Cir. 1996)) (holding administrative hearing officers are “entitled to absolute immunity from damages under 42 U.S.C. § 1983”).<sup>6</sup> Although the hearing officer is not the subject of Mr. Bolen’s claim, our Courts have favorably cited and followed the holding of *Butz* and other cases, which provide immunity to all administrative officials acting in a quasi-judicial or administrative prosecutorial capacity.

In *Gregory Rockhouse Ranch, LLC v. Glenn’s Water Well Serv.*, 2008-NMCA-101, 144 N.M. 690, the Court held absolute immunity protected administrative officials carrying out quasi-judicial proceedings. *Id.*, ¶ 18. A “quasi-judicial

---

<sup>5</sup> Licensees aggrieved by administrative actions before the NMRC have similar appeal rights, including the right to hearing before an independent hearing officer (*See generally*, 15.2.1.9 NMAC) and review by District Courts pursuant to Rule 1-075 NMRA.

<sup>6</sup> At page 23 of the Brief-in-Chief, Mr. Bolen suggests it is not clear NMRC would be entitled to quasi-judicial immunity in an action under 42 U.S.C. § 1983. Under the framework of § 1983 and the holdings of *Butz* and *Horwitz*, NMRC employees would indeed be absolutely immune from such a claim. NMRC itself would have Eleventh Amendment immunity from such a damages claim.

administrative action is one that possesses certain trappings required by due process, e.g., notice, hearing and opportunity to present witnesses.” *Id.*, ¶ 21 (internal citations omitted). The administrative proceeding in this case had all these features: Mr. Bolen was provided a full hearing before the Board of Stewards, was represented by counsel, and was days away from an additional hearing before an administrative law judge when he withdrew his appeal. The actions taken by NMRC that form the basis of Mr. Bolen’s Complaint were quasi-judicial and absolutely immune from suit.

Quasi-judicial immunity has been recognized by New Mexico courts in many contexts. For example, in *Collins on Behalf of Collins v. Tabet*, 1991-NMSC-013, 111 N.M. 391, this Court considered whether a guardian ad litem was protected by quasi-judicial immunity. In holding the guardian ad litem was absolutely immune from suit, the Court provided a history of absolute immunity and New Mexico’s approach to it. *Id.*, ¶16. The Court cited federal jurisprudence favorably, noting the U.S. Supreme Court has “recognized that the judicial, prosecutorial, and legislative functions require absolute immunity.” *Id.* (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 810-11 (1982)). The Court noted the “Supreme Court ... has extended absolute immunity to various persons whose adjudicatory functions or other involvement with the judicial process have been thought to warrant protection from harassment, intimidation, or other interference with their ability to engage in impartial decision-

making.” *Id.*, ¶ 18. The Court then listed over a dozen examples of different persons who had been protected by absolute immunity, from administrative hearing officers, to prosecuting attorneys, to various arms of the courts. *Id.* ¶¶ 18-19.

Quasi-judicial immunity is well established and long-recognized in New Mexico, and is therefore preserved by the Section 10 of the CRA. The Court of Appeals should be affirmed.

## II. The CRA Preserves Quasi-Judicial Immunity.

When it created a right of action, the CRA waived sovereign immunity and expressly excluded qualified immunity as a defense. See N.M.S.A. § 41-4A-3.

However, at N.M.S.A. § 41-4A-10, the CRA provides nothing in it “shall [] abrogate judicial immunity, legislative immunity or any other constitutional, statutory or common law immunity.” As demonstrated above, judicial, quasi-judicial, and prosecutorial immunity are well established in New Mexico, and are therefore preserved by the CRA.

If the immunities described in Section 10 of the CRA did not apply to public bodies, there would be no reason to include it in the statute. Indeed, if the Legislature only intended those immunities to apply to individual public officials, Section 10 would have been unnecessary because Section 3 of the CRA does not permit claims against public employees at all. See N.M.S.A. § 41-4A-3(C) (A claim under the CRA can only be made against a public body). Similarly, the CRA’s prohibition

against qualified immunity would have also been unnecessary because a public body cannot claim qualified immunity. *See, e.g., Bertot v. Sch. Dist. No. 1, Albany Cnty., Wyo.*, 613 F.2d 245, 248 (10th Cir. 1979) (the common law does “not recognize the same qualified immunity in damages actions for public bodies that it [does] for public officials.”)

Statutes must be interpreted such that “no part of the statute is rendered surplusage or superfluous.” *Am. Fed’n of State, Cnty. & Mun. Emps. v. City of Albuquerque*, 2013-NMCA-063, ¶ 5, 304 P.3d 433 (internal citations omitted); *See also State v. Montano*, 2020-NMSC-009, ¶ 44, 468 P.3d 838, 851 (interpreting a statute in a way rendering the language “surplusage and meaningless [is] contrary to the canons of statutory construction).

This Court has held “[it] is our duty, wherever possible, to give meaning to a statute's provisions. Construing a statute in a way that renders one of its provisions entirely superfluous should be our last resort.” *State v. Jackson*, 2010-NMSC-032, ¶ 28, 148 N.M. 452, 459, 237 P.3d 754, 761, (overruled on other grounds by *State v. Radosevich*, 2018-NMSC-028, ¶ 28, 419 P.3d 176.

The Court of Appeals must be affirmed, otherwise Sections 4 and 10 of the CRA are rendered meaningless and unnecessary.

III. Public Bodies Are Vicariously Immune For Immunized Acts Of Their Employees.

As noted above, the CRA requires claims be “brought exclusively against a public body.” See N.M.S.A. § 41-4A-3(C). A public body sued under the CRA “shall be liable for conduct of individuals acting on behalf of... the public body.” *Id.* Because NMRC can only be vicariously liable for the actions of its employees, the immunities that would protect those employees must also apply to NMRC.

Even if Mr. Bolen is correct that the immunities preserved by Section 10 of the CRA only apply to individual public employees, those immunities still extend to claims against the public body by operation of N.M.S.A. § 41-4A-3(C). Because NMRC’s liability under the CRA can only flow from acts of its employees, then where a NMRC employee is protected by quasi-judicial immunity, then so must NMRC.

In an unpublished case, our Court of Appeals acknowledged that where constitutional claims against a police officer had been dismissed for qualified immunity, the public employer would be entitled to *res judicata* for any claim based in *respondeat superior*. See *J.V. on behalf of C.V. v. Brooks*, No. A-1-CA-36350, 2020 WL 2126792, at \*7 (N.M. Ct. App. May 4, 2020) (noting that “Plaintiffs... correctly concede that any claims against the current Defendants that rely on vicarious liability are properly dismissed on *res judicata* grounds).

Other courts have made similar holdings. *See, e.g., Chaney v. McBride*, No. 3:13-CV-02246-AKK, 2014 WL 3566312, at \*2 (N.D. Ala. July 18, 2014) (finding “a principal cannot be vicariously liable for the acts of its agent when the agent is immunized from liability for those acts”); *Thatcher v. Faleafine*, No. 17-CV-168-SWS, 2020 WL 13565179, at \*4 (D. Wyo. June 26, 2020) (finding even if a principal “itself is not ‘immune’ from liability, upon a finding of immunity on the part of [its agent], Plaintiffs’ vicarious liability claim will necessarily fail as a matter of law) (citing *Darrar v. Bourke*, 910 P.2d 572, 578 (Wyo. 1996) (holding a governmental entity cannot be held vicariously liable where a peace officer is entitled to qualified immunity). *Young v. City of Council Bluffs, Iowa*, 569 F. Supp. 3d 885, 903 (S.D. Iowa 2021) (finding “a municipality can be ‘vicariously immune’ from liability for its employees’ constitutional torts when the employees would be immune from personal liability.”) (citing *Baldwin v. City of Estherville (Baldwin V)*, 929 N.W.2d 691, 696 (Iowa 2019)).

Public entities are vicariously immune for acts of their employees that would be immune. The Court of Appeals should be affirmed.

#### IV. Mr. Bolen Seeks An Absurd Result.

The parties agree that statutes must not be interpreted in a way that leaves us with an absurd result. See Brief-in-Chief, p. 20 (citing *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 3, 117 N.M. 346).

If Mr. Bolen prevails here, hundreds of years of jurisprudence will be wiped away. If NMRC is not immune for the quasi-judicial acts of its employees, then courts in New Mexico can (and most certainly will) be sued by litigants aggrieved by judicial decisions. Our Legislature will be sued by anyone who believes a statute violates some constitutional right. Offices of District Attorneys and other public agencies will be sued for acts that have been protected by quasi-judicial immunity for decades. This could not have been the intent of the Legislature when enacting the CRA and would cause an absurd result.

A person aggrieved by a judicial or quasi-judicial body already has a remedy. Judges can be appealed, as can the results of administrative proceedings. In this case, Mr. Bolen availed himself of those appeal rights, but voluntarily withdrew his appeal just days before he was set to have a hearing before an independent hearing officer. Had he been unsatisfied with the result of that hearing, he could have appealed to the District Court pursuant to Rule 1-075 NMRA. Mr. Bolen's remedy was through that appeal process, not a claim for damages under to the CRA. The Court of Appeals correctly held quasi-judicial immunity applies to public bodies and should be affirmed.

### **Conclusion**

Mr. Bolen suggests the Court of Appeals has "eviscerate[d] the CRA as a mechanism for obtaining relief... where alleged actionable activities by an agent

lead to any kind of public body fact finding or adjudicative process...” See Brief-in-Chief, p. 21. However, Mr. Bolen does not allege that some wrongful action by a NMRC agent led to an administrative process; he claims the administrative process itself is the wrongful action. The CRA does not immunize every action taken by a State agency, but it does preserve absolute immunity against claims for damages for the initiation and prosecution of an administrative licensing action, even where a plaintiff alleges that action was ‘vindictive’.

The Court of Appeals should be affirmed because the immunities described in Section 10 of the CRA must necessarily apply to the public bodies permitted to be sued by the CRA. Public agencies are vicariously immune for the acts of their employees and, as such, if judicial immunity would protect the employee, then the agency is also immune.

**WHEREFORE** New Mexico Racing Commission requests the Court of Appeals be affirmed.

Respectfully submitted,

**JACKSON LOMAN DOWNEY  
& STEVENS-BLOCK, P.C.**

By: /s/ Eric Loman  
Counsel for New Mexico Racing Comm’n  
201 Third St. NW, Ste. 1500  
Albuquerque, NM 87102  
(505) 767-0577  
[eric@jacksonlomanlaw.com](mailto:eric@jacksonlomanlaw.com)

**Statement of Compliance**

Pursuant to Rule 12-318(F) NMRA, NMRC states this brief was prepared in Times New Roman 14 pt. font. The body of this brief contains 3,331 words, as calculated by Microsoft Word's word count function.

**Certificate of Service**

I certify that on September 25, 2024, the foregoing was served electronically on all counsel of record.

By: /s/ Eric Loman  
Eric Loman